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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 333

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

JAMES L. CAMPBELL, MITCHELL B. JOPLIN, MALCOLM E. KIRK AND LOCKHEED AIRCRAFT CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 1, 1948.

CERTIORARI GRANTED NOVEMBER 22, 1948.

No. 11750

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Appellant,

vs.

JAMES L. CAMPBELL, MITCHELL B. JOPLIN, MALCOLM E. KIRK and LOCKHEED AIRCRAFT CORPORATION, a corporation,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

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Parker & Company, Law Printers, Los Angeles. Phone TU. 5206.

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IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Appellant,

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[Clerk's Note: When deemed likely to be of an important nature errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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In the District Court of the United States in and for the Southern District of California

Central Division

No. 6028-B Civil

JAMES E. CAMPBELL, MITCHELL B. JOPLIN, and MALCOLM E. KIRK,

Petitioners,

vs.

LOCKHEED AIRCRAFT CORPORATION, a corporation,

Respondent.

PETITION FOR ENFORCEMENT OF VETERANS' REEMPLOYMENT RIGHTS

The petitioners above named respectfully represent:

I.

This petition is filed under the provisions of Section 8(e) of the Selective Training and Service Act of 1940, as amended (50 U. S. C. A. App., Sec. 308(e)), and Section 7 of the Service Extension Act of 1941, as amended (50 U. S. C. A. App. Sec. 357); and jurisdiction of the Court is based thereon.

II.

Respondent is a corporation engaged in manufacturing airplanes at a factory which respondent maintains, and wherein respondent employs divers persons, located at Burbank, California, within the jurisdiction of this Court. Respondent has been so engaged throughout the period covered by this petition.

III.

The petitioners are honorably discharged veterans of the [2] United States Army, who hold positions as grade "A" field and service mechanics in the employ of the respondent in the operation of said factory. Each petitioner left a position, other than a temporary position, as a field and service mechanic in the employ of the respondent in the operation of said factory, during 1944-1945, and before June 4, 1945, in order to perform training and service in the armed forces of the United States under the requirements of the Selective Training and Service Act of 1940. Pursuant thereto, each petitioner was inducted into the United States Army and thereafter served therein until he satisfactorily completed his period of training and service, and was honorably discharged therefrom, on a day subsequent to June 4, 1945, and received a certificate of such satisfactory completion, pursuant to law. While still qualified to perform the duties of his former position, each petitioner applied to the respondent for reemployment within 90 days after his discharge from the United States Army, and each was reemployed and restored to his position as field and service mechanic in the respondent's employ at said factory. The respective hourly rate of pay of each of the petitioners is as follows: James L. Campbell, $1.50; Mitchell B. Joplin, $1.73; and Malcolm E. Kirk, $1.60.

IV.

Although the petitioners were reemployed and restored to their former positions as aforesaid, each was restored with a loss of seniority, as shown below, and said loss in seniority has resulted in a financial loss to each petitioner.

V.

At the time of the induction of each petitioner into military service, there was in effect between the respondent and its employees, represented by Aeronautical Industrial Lodge #727 of the International Association of Machinists affiliated with the American Federation of Labor, a collective bargaining agreement regulating the wages, hours and working conditions in said factory. [3] Said agreement is dated September 15, 1941, and was effective on that date for the future period of the unlimited national emergency proclaimed by the President of the United States. Said agreement provided in Article III thereof that the seniority of each employee should date from the time of his employment, and that lay-offs should be made as follows:

> "In case of a slack in production, layoffs are to be made primarily on the basis of the principle of seniority. Due consideration will be given, however, to (a) knowledge, training, ability, skill and efficiency, and (b) deportment, record and other factors. If it becomes necessary to reduce the working force in any plant or department, a plan of layoff procedure will be prepared by the management and submitted to the Union for approval. If such plan is not acceptable to the Union the Company agrees to enter negotiations with the Union and to attempt to arrive at a mutually agreeable plan. If, however, at the end of one working week from the date the Company submitted its original plan of layoff procedure to the Union no new plan has been mutually agreed to, the Company may proceed according to its proposed plan of layoff subject to Article II, Section 6."

Said Article II, Section 6, prescribes a permissible grievance procedure.

No preferential retention, in case of layoffs, was given in said agreement to any union chairman. It was provided in the agreement that the Union should designate in the departments of the plant a department chairman for "approximately every 35 to 50 employees"; and also a senior chairman for each department, or for every 9 department chairmen, or fraction thereof, on each shift of work; and that there would be one union chairman elected for a one-year term. The agreement further provided that upon induction into military service, an employee should be granted a [4] leave of absence therefor, without loss of seniority rights and be reemployed "in preference to all other persons in their occupations with less seniority." A copy of said agreement is attached hereto, marked Exhibit "A" and is incorporated herein. Reference is made to the following sections of said 1941 agreement as the basis of the above statement of the provisions thereof, to wit: Article I, Section 3; Article II, Section 4; Article III, Sections 1, and 5; Article IV, Section 5.

VI.

During the petitioners' absence in military service, and on June 4, 1945, a new and different collective bargaining agreement was entered between respondent and said Lodge #727 I. A. M., in which it was provided that there should be designated by the union in the departments of the plant, a group chairman for approximately every 35 to 50 employees; and a senior chairman for each department, or for every 9 group chairmen, or fraction thereof, on each shift. The agreement provided that seniority should be "the relative status of employees in respect of length of

service with the company"; and that general layoffs should be made as follows:

"(A)—General Layoff Procedure. Layoffs shall be made in order of Company-wide seniority applied by occupation where ability, skill and efficiency are substantially equal. However, in the case of employees with four years' or more seniority, the Company may, in its discretion, retain them in order of their Company-wide seniority, regardless of occupation, where ability, skill and efficiency are substantially equal. Any claim of unjust discrimination in the exercise of such discretion may be taken up as a grievance. Employees who have not acquired seniority rights may be laid off without regard to relative length of service.

"The word 'occupation' as used herein, includes all grades and leadmen within an occupation." [5]

This 1945 agreement provided, however, for preferential retention of the above mentioned group, and senior union chairmen in the event of a general layoff, as follows:

"Section 3—Layoffs (D) Top Seniority for Union Chairmen for Purpose of Layoffs: For the purpose of applying the Temporary and General Layoff Procedures, Union Chairmen who have acquired seniority shall be deemed to have top seniority so long as they remain Chairmen. If the application of the General Layoff Procedure will result in the retention of more of such Chairmen in a group or department than are provided for in Article II, Section 2 of this Agreement, the Company shall prepare and furnish to the Union a list of all Chairmen in the locations where

the surplus exists. The Union shall upon request of the Company promptly designate the Chairmen who are to remain in that capacity, and the Chairmen not to be retained as Chairmen shall be governed by the seniority rules applicable to the layoff of other employees. During a Temporary Layoff and during the period between the first and second steps in an Emergency Reduction of the Working Force, the terms of office of laid-off Union Chairmen shall be deemed to continue."

The agreement provided for reemployment of veterans of the armed forces, as follows:

"Section 6—Employees Entering Armed Forces: Employees (other than temporary employees) who shall have left the employment of the Company for the purpose of entering the armed forces of the United States, shall be re-employed by the Company in accordance with the provisions of the Selective Training and Service Act of 1940, as such Act may be amended." [6]

A copy of said agreement of June 4, 1945 is hereto attached as Exhibit "B" and incorporated herein by this reference. Reference is made to the following sections thereof as the basis for the provisions outlined above: Article II, Section 2; Article IV, Sections 1, 3, 4 and 6.

VII.

The agreement dated September 15, 1941 remained effective until the agreement of June 4, 1945, was signed, and thereafter the latter has remained in effect to this date.

VIII.

In the latter part of June, 1946, and within one year after the reemployment of each of the petitioners, the respondent made a general layoff of certain field and service mechanics, grade "A" whose employment was covered by the above mentioned agreements, and in the course thereof, each of the petitioners was laid off, but the respondent retained in its active employ numerous workmen in their occupation, including Union chairmen, i. e. group and senior chairmen, with less seniority than petitioners.

At the time of such general layoff, there were many more group and senior chairmen in the petitioners' occupational group than the number provided for in Article II, Section 2 of the Agreement dated June 4, 1945, to wit, one group chairman for every 35 to 50 employees and one senior chairman for each department, or for each 9 chairmen, yet the respondent did not call for or require a designation of a smaller number of such chairmen to be made by the Union, as provided for in Article IV, Section 3(D) of the agreement, which is set out in full above, as petitioners are informed, believe and state.

IX.

Petitioners Campbell and Kirk were laid off June 21, 1946 and Petitioner Joplin was laid off on June 24, 1946, in the course of such general layoff, but the respondent retained in its active [7] employ in said occupational group more than 3 group chairmen, who had less seniority, i. e., "length of service with the company," than any of the petitioners. The ability, skill and efficiency of the petitioners was substantially equal to that of any of the group or senior chairmen retained in active employment, but regardless of this, the general layoff was made on the

ole basis of Company-wide seniority, and not, on the basis of ability, skill or efficiency, as regards petitioners.

X.

Petitioners protested against their lay-off and the retention of said group and senior chairmen, with less seniority, in respondents' active employment; and the petitioners were restored to active employment, as follows: Campbell and Joplin on July 15, 1946; Kirk, July 16, 1946. By reason of said layoff, the petitioners lost in wages the following amounts, which they would have earned in the respondent's employ had not said junior group and senior chairmen been retained as aforesaid under the super-seniority provisions of Article IV, Section 3(D), of the 1945 agreement. Petitioners are advised and represent that their said loss in wages was due to the unlawful action of respondent in failing to accord the petitioners their full seniority, without any loss therein under the super-seniority provisions; and that they are entitled to compensation therefor.

XI.

Data concerning the re-employment of each of the petitioners, is as follows:

James L. Campbell: Was originally hired, and has a companywide seniority date of August 17, 1942; terminated to enter the Army February 26, 1944; was honorably discharged October 28, 1945; applied for reemployment November 15, 1945; was reemployed as a field and

service mechanic "A" November 27, 1945; was laid off June 21, 1946 as aforesaid, and rehired or called back to work July 15, 1946; hourly rate of pay, $1.50; total loss in wages due to layoff, $168.00. [8]

Mitchell B. Joplin: Originally hired, and has a companywide seniority date of April 19, 1943; terminated to enter the Army May 28, 1945, which he did on June 4, 1945; honorably discharged, November 23, 1945; applied for reemployment December 5, 1945, and was reemployed as field and service mechanic "A" December 10, 1945; was laid off June 24, 1946; hourly rate of pay, $1.73; total loss in wages due to lay-off, $124.56.

Malcolm E. Kirk: Originally hired, and has a companywide seniority date of August 5, 1942; terminated to enter the Army May 31, 1944, which he did June 2, 1944; honorably discharged January 12, 1946; applied for reemployment February 8, 1946, and was rehired as field and service mechanic "A" March 7, 1946; was laid off June 21, 1946, as aforesaid, and rehired or called back to work July 16, 1946; hourly rate of pay, $1.60; total loss in wages due to lay-off, $190.00.

Wherefore, Petitioners Pray:

1. That the petitioners have and recover of the respondent as and for their loss of wages suffered by reason of respondent's unlawful action in failing and refusing to reemploy them without loss of seniority, and in laying them off while retaining in active employment group and senior chairmen with less company-wide seniority than they, the following sums: James Campbell, $168.00; Mitchell B. Joplin, $124.56; Malcolm E. Kirk, $190.00.

2. That petitioners have all such other further and different relief as they may be entitled to in the premises, and that they have general relief.

JAMES M. CARTER
United States Attorney
RONALD WALKER
Assistant U. S. Attorney
Chief of Civil Division
By James C. R. McCall, Jr.
Assistant U. S. Attorney
Attorneys for Petitioners. [9]

[Verifications.] [10-11-12]

EXHIBIT "A"

AGREEMENT

between

Lockheed Aircraft Corporation

and

Vega Aircraft Corporation

and the

Aeronautical Industrial District Lodge 727

of the

International Association of Machinists
Affiliated with American Federal of Labor

Effective Date September 15, 1941

This agreement constitutes a part of the regulations of the Lockheed Aircraft Corporation and the Vega Aircraft Corporation. Each employee should become familiar with the provisions herein and retain this copy for reference. [13]

* * * * * * * * *

PREAMBLE

This Agreement entered into by and between Lockheed Aircraft Corporation, a California Corporation, and Vega Airplane Company, a California Corporation, both hereinafter called "the Company," and Aeronautical Lodge 727 of Burbank of the International Association of Machinists, hereinafter called "the Union," a non-profit association affiliated with the American Federation of Labor, evidences the desire of the parties hereto promote and maintain harmonious relations between the Company and its employees, and the willingness of the Company to deal with them through the Union as their representative. [18]

ARTICLE I.

GENERAL CONDITIONS OF CONTRACT

Section 1—Sole Agreement

This Agreement, when accepted by the parties hereto, and signed by their respective agents thereunto duly authorized, shall supersede all previous agreements by and between the parties hereto, and shall constitute the sole agreement between them.

Section 2—Exclusive Representation

For the period of this Agreement, the Company recognizes and accepts the Union as the sole agency for the

purpose of representing all employees of the Company (except officers of the Company appointed by its Board of Directors, and except monthly salaried executive, administrative and professional employees, and all outside salesmen and representatives, as defined by the Wage and Hour Division of the United States Department of Labor, and except guards and firemen and except supervisory personnel who devote all of their time to supervision) in negotiations pertaining to hours, wages and conditions incident to their employment by the Company.

At the time of employment, each employee shall be given a copy of this Agreement and a letter which shall read as follows:

> We are handing to you herewith a copy of the latest Agreement between Lockheed Aircraft Corporation and Vega Airplane Company and Aeronautical Lodge 727 of the International Association of Machinists, affiliated with the American Federation of Labor, arrived at as the result of negotiations between the management of the two Companies and representatives of the Union. [19]
>
> In order that there may be no misunderstanding, the management affirms its sincere belief in the principles of collective bargaining, between management representatives and duly elected representatives of employees, who are members of the Union, and this Agreement enumerates the benefits pertaining to wages, hours and working conditions which the employees now enjoy as a result of that method of dealing.

Since March 12, 1937, Aeronautical Lodge 727, International Association of Machinists, has been

sole representative of Lockheed and Vega employees on matters pertaining to wages, hours and conditions incident to their employment. Your management affirms that the joint relationship with this Union has been continuous and harmonious.

The management does not wish to suggest that membership in the Union is necessary to secured and continuous employment but appreciates the advantage of knowing that the voice of the Union is in effect the voice of all its weekly salaried employees covered by this Agreement. It is our desire that all employees give due consideration to membership in the Union.

Section 3—Period of Agreement

This Agreement shall become effective upon its signature and shall remain in force until July 1, 1943, or for the period of the Unlimited National Emergency proclaimed by the President of the United States, whichever is longer, and thereafter until thirty (30) days after either party hereto shall give to the other written notice of desire for change or termination. During such thirty-day period, conferences shall be held by and between the parties hereto with a view to arriving at further agreement. Notices permitted or required to be served under the terms of this Agreement shall be sufficiently served for all purposes herein when mailed postage prepaid, registered mail, return receipt requested, to Robert E. Gross, or his successor, Lockheed Aircraft Corporation, Burbank, California, and/or Courtlandt S. Gross, or his successor, Vega Aircraft Company, Burbank, Califor- [20] nia, for service upon the Company, and when similarly mailed to Dale O. Reed, President of the Union, at 147 North

Palm Avenue, Burbank, California, or to the successor of him if and when information has been supplied to the Company of the name and address of such successor, and the date of such notice shall be the controlling date for all purposes hereunder.

Section 4—Amendments Permitted

This Agreement may be amended or added to at any time by the written consent of both parties hereto. However, after one year from date of the signing of this Agreement, either party may, after fifteen (15) days' written notice, open negotiations only on items directly affecting wage rates and other financial benefits for employees. However, if the national emergency shall have extended beyond July 1, 1943, either party may, at that time, after fifteen (15) days' written notice, terminate the Agreement or negotiate amendments on any item of the Agreement. This Agreement shall remain in full force and effect during negotiations on amendments.

Section 5—Performance Required

Either party hereto shall be entitled to require specific performance of the provisions of this Agreement. Any violation of the provisions of this Agreement on the part of any Company employee in a full-time supervisory capacity shall be considered as a violation of this Agreement on the part of the Company. Any violation of the provisions of this Agreement on the part of Union Chairmen and/or representatives shall be considered a violation of this Agreement on the part of the Union. Time is of the essence of this Agreement.

The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent for any further waiver of such breach or condition.

Section 6—Agreement Not Assignable

This Agreement is not assignable. In the event of change of management, or geographical location of [21] plants, or sale of the Company the present management shall do everything in its power to insure the continuation of this Agreement during its prescribed period.

Section 7—Right to Manage Plant

The Company has and will retain the right and power to manage the plant and direct the working forces, including the right to hire, suspend, discharge, promote, demote, or transfer its employees for just cause, subject to the terms of this Agrement and the grievance procedure established herein.

Section 8—Apprenticeship Agreement

An apprenticeship agreement shall be a part of this Agreement.

ARTICLE II—UNION-COMPANY RELATIONS

Section 1—Strikes and Lockouts

The Union is opposed to strikes. A strike shall be called only after all conciliation, mediation and other methods and procedures provided herein, by Federal law or by Federal Government agencies, executive orders and proclamations and rules and regulations of governmental administrative bodies, shall have failed to adjust controversies or grievances. Should a strike vote then be called, the Company shall be notified in writing by the President of the Union of the action taken, and under no circumstances shall a strike be effected until expiration of fifteen days after date of such written notice.

No such strikes shall be called for any purposes other than for the adjustment of a controversy or grievance directly affecting the Company and the Union. In the event of an effective strike, the Union and its members shall peaceably withdraw from the property of the Company. [22]

Neither the Union nor any of its members shall participate in or encourage any sit-down or slow-down strikes in or upon the Company's property. Neither the Union nor any of its members shall participate in or encourage against the Company any strike, sit-down, slow-down, or suspension of work effected by others than the Union and its members and those employees who have expressed a desire to be represented by the Union.

The Company is opposed to "lock-outs" and shall cause one only after all possible means to adjust grievances have failed and only after a fifteen-day written notice, but the Company reserves the right to close its plant should it become necessary to protect its property and employees from violence.

Section 2—Labor Relations Committee

A Labor Relations Committee is hereby established, which shall consist of representatives of the Union and the Company. The representatives of the Union shall consist of a Board of five elected members of the Negotiating Board of the Union and the President and another official of the Union. The representatives for the Company shall consist of a like number to be chosen in such a manner as the Company may desire. The Labor Relations Committee may discuss and negotiate all matters pertaining to wages, hours, and working conditions, and shall review and settle all disputes and grievances which may arise

between the Company and the Union and/or Company employees. Individual grievances or items affecting a single department must conform to Section 6 of this Article before being presented to the Labor Relations Committee, but items of a company-wide nature may be presented directly. This Committee may establish subcommittees on a permanent or temporary basis.

A meeting of this Committee may be called by the Union or the Company upon three (3) regular working days' notification.

The decision of the Labor Relations Committee shall be considered as final if a majority of the Union representatives and a majority of the Company representatives concur. If a decision cannot be reached the aid of the Conciliation Service of the U. S. Department of Labor shall be requested. [23]

Section 3—Labor Relations Sub-Committee

There shall be established one Labor Relations Sub-Committee for Lockheed and one Labor Relations Sub-Committee for Vega. Each sub-committee shall consist of three members of the Union and three representatives of management. Each committee shall meet once each week and will handle all grievances which have proceeded through the regular channels as outlined in Section 6 of this Agreement, without a satisfactory settlement having been made, but shall deal only with those grievances which have been before the Industrial Relations office of the Company three (3) regular working days prior to the time of the meeting. Special meetings of these committees may be called. Any meeting may be cancelled or postponed with the mutual consent of the President of

the Union and the Industrial Relations office of the Company.

Section 4—Union Department Chairmen

As designated by the Union there shall be in the departments of the plant a department chairman for approximately every 35 to 50 employees and a senior chairman for each department or for every 9 department chairmen or fraction thereof. This shall apply to each shift. Once each year at a time designated by the Union, the Company shall permit all employees to vote on Company property and during working hours for a Union Chairman to serve them for the coming year. The voting shall be conducted under rules and regulations as may be established by the Union subject to the approval of the Company.

Section 5—Department Representation

It is the desire of the Union and the Company that each department operate in complete agreement between the Union and supervision. Differences arising out of employment shall, wherever possible, be concluded within the department by the cooperation of the Union chairmen, the supervisory staff, and the personnel represen- [24] tatives. In order to accomplish this cooperative action, foremen shall set aside a portion of one day per week to discuss with the senior chairmen any problems arising during the week. At this time, any differences regarding rates of pay, hours, or working conditions, or the provisions of this Agreement, shall be discussed. The employee should first present his differences to the department head, assistant foreman, or sub-foreman (where exists). However, the employee has the privilege of presenting his dif-

ference in written form to the Chairman to be taken up by the Senior Chairman at the time of his regular weekly meeting with the foreman. However, if extremely urgent, any differences may be presented by the Senior Chairman to the foreman upon its receipt.

Section 6—Method of Handling Grievances

Should any difference arise within any department of the Company which cannot be settled according to Section 5 of this Agreement within one week, the matter becomes a grievance and earnest effort shall be made to settle the grievance in the following manner:

Step 1. The written grievance shall be presented by a Business Representative of the Union to the Industrial Relations office. The Industrial Relations office shall investigate the grievance and may confer with the parties and department involved with a view to arriving at a mutually satisfactory agreement.

Step 2. If through this latter method a mutually satisfactory agreement is not reached, the case may be presented to the Labor Relations Sub-Committee of that Company at its next regular meeting.

Step 3. Then, if a mutually satisfactory settlement is not reached within one week, the grievance or problem shall be presented in writing to the Labor Relations Committee, together with the findings of the former reviews.

Section 7—Business Representatives and Union Officials

The Business Representatives of the Union shall have access to the Company's plants or to the departments of [25] the Company's plants to which they are assigned, for the purpose of contacting Department Chairmen. Such visits shall be subject to such regulations as may be made

from time to time by the Company, the U. S. Army, and the U. S. Navy. The Company shall not impose regulations which will exclude the Business Representatives from the plants nor render ineffective the intent of this provision.

No full-time Union official or Business Representative shall discuss any problem with employees (other than Chairmen) or with the supervision of any department, except as provided in Article II, Section 6, of the Agreement.

Section 8—Cooperation

The Union and its members agree to report to the Company any acts of sabotage, subversive activities, theft, damage to or taking of any employee's, Company's and/or Government's property or work in process or materials or any known threat of sabotage, subversive activities, or damage to or taking of such property, and the Union further agrees if any such acts occur to use its best efforts in assisting the Company and the Government to determine and apprehend the guilty party or parties.

Section 9—Posting Notices

Places shall be provided at locations agreed upon for the posting of the rules and regulations of the Union as well as notices of interest after submission to the Industrial Relations office.

Section 10—Solicitation of Memberships

Employees and Union representatives shall not solicit union memberships or collect dues on Company property on the Company time of any employee, although such activities may be conducted by employees on Company property on the free time of the employees. [26]

Section 11—Reports

The Union, and the Company may request the following reports which are to be furnished as soon as possible:

(a) Upon the request of the Company, the Union shall certify to the Company the number of its members.

(b) Upon the request of the Union, the Company shall certify to the Union, the number of employees that are in the various occupational classifications recognized by this Agreement.

(c) Upon the request of the Union, the Company shall furnish the Union with lists of employees in their respective departments, showing rates, classifications, and date of hiring and shifts.

(d) In hiring new employees, the Company agrees to use its best efforts to notify the Union Chairman, in whose group the employees are placed, the name of such employees, their wage rate, shift, and classification within twenty-four (24) hours of the commencement of their employment.

ARTICLE III—EMPLOYMENT CONDITIONS

Section 1—Hiring Date

Six months after an employee is hired his seniority shall be retroactive to the date of his hiring. Rehiring is governed by the sections following.

Section 2—Advancements

In a case of an opening in a higher grade of a classification, the employees with the most seniority in the lower grades in the same branch of the department shall have preference over all others for the advancement.

When there are no competent employees available in this branch of the department, or when no employee in the group can satisfactorily perform the advanced job, [27] employees will be taken from other branches of the same department before hiring new employees or transferring employees from other departments.

In case of an opening for a leadman or group head, the department head involved will, before making the appointment, submit his selection to the Industrial Relations office for approval. With this selection, the department head will submit the names of at least two other employees who are to be considered for the opening, with a written explanation as to the reasons for his selection.

Section 3—Transfers

Transfers to higher rated jobs in other departments shall be governed by the same principles as those pertaining to advancement. Full consideration shall be given to employees requests for transfers.

Section 4—Quits and Discharges

Any employee quitting the services of the Company or discharged from the services of the Company shall forfeit all seniority. If he is rehired later, the date of rehire shall govern. A five-day period of unreported absence without a reasonable explanation shall be considered a quit.

Section 5—Layoffs

In case of a slack in production, layoffs are to be made primarily on the basis of the principle of seniority. Due consideration will be given, however, to (a) knowledge, training, ability, skill and efficiency, and (b) deportment

record and other factors. If it becomes necessary to reduce the working force in any plant or department, a plan of layoff procedure will be prepared by the management and submitted to the Union for approval. If such plan is not acceptable to the Union the Company agrees to enter negotiations with the Union and to attempt to arrive at a mutually agreeable plan. If, however, at the end of one working week from the date the Company submitted its original plan of layoff procedure to the Union no new plan has been mutually agreed to, the Company may proceed according to its proposed plan of layoff subject to Article II, Section 6.-[28]

To enable the Union to determine that the principle of seniority and the procedure are adhered to, the Company will provide the Union prior to a layoff with a list of all employees it intends to release.

Any employee who has been off the payroll of the Company because of a layoff for a period of sixty (60) days shall lose all former seniority unless he registers in person or by mail at the Industrial Relations office every two weeks, after the expiration of sixty (60) days, in order to preserve his seniority. Upon being rehired, if the above rules have been complied with, the original hiring date shall govern.

Section 6—Sanitary, Safety and Health Conditions

The Company agrees to maintain sanitary, safe and healthful conditions in all its plants and working establishments in accordance with the laws of the State, County and City of its place of operation. Proper and modern safety devices shall be provided for all employees working on hazardous or unsanitary work, such devices

(except articles of clothing) to be furnished by the Company. No employee shall be discharged for refusing to work on a job not made reasonably safe or sanitary for him, or that might unduly endanger his health.

All recommendations and grievances concerning sanitation, safety, health and other working condition factors will be presented through the same procedure as outlined in Article II.

One member of each of the Company's General safety and Sanitation Committees shall be elected by the Union.

Section 7—Hiring Age

The Company agrees that there shall be no established maximum age limit in the hiring of employees.

Section 8—Employment Not Jeopardized

Union membership or legitimate Union activity will not jeopardize an employee's standing with the Company or opportunity for advancement. [29]

ARTICLE IV—EMPLOYEE PRIVILEGES

Section 1—Vacations

(a) Employees who have completed one year's continuous service from the date of hiring, or rehiring, shall be eligible for a vacation with pay, such vacation to be one working week, for which the pay shall be five days at the base rate.

(b) Employees who have completed five years' continuous service from the date of hiring, or rehiring, shall be eligible for an additional week's vacation for which the pay shall be five days at the base rate.

(c) This vacation must be taken within ten months of the date of eligibility or be forfeited.

(d) An employee who is laid off will be granted any vacation for which he is eligible at the time he is laid off.

(e) Vacation time preference shall be given to employees with the greatest seniority.

(f) This section shall become operative at the conclusion of the present vacation season, February 28, 1942.

Section 2—Holidays

The Company recognizes the following six (6) legal holidays: New Year's Day; Memorial Day; Fourth of July; Labor Day; Thanksgiving Day; and Christmas Day.

Full pay (eight (8) hours at straight time) shall be paid to all employees whenever one of these holidays falls on Monday through Friday or on Saturday if the work schedule of the majority of employees includes Saturdays. In addition, straight time shall be paid for hours worked on holidays up to eight (8) hours, thereafter two times the regular rate shall be paid.

No pay under this provision shall be granted an employee during his vacation or leave without pay.

Should a recognized holiday fall upon a Sunday, the Monday immediatly following shall be observed as the holiday. [30]

Section 3—Leaves Without Pay

Leaves of absence without pay may be granted employees for a period not to exceed ten (10) working days during the year. For good and sufficient reason the Company may extend the period of leave. The leave of absence shall not in any way jeopardize the employee's standing

with the Company. Upon return from leave of absence, the employee shall be reinstated without loss of seniority and at a rate no lower than the one held previous to the leave.

At such times as the Union may request, the Company will allow Union members leaves of absence without pay for Union business of Lodge 727. The leaves of absence shall in no way jeopardize the standing or rights of the members in their positions. All full-time Union officials who formerly were employees are considered as on leaves of absence, so long as they are employed by the Union.

Section 4—Sick and Injury Leave

In case of illness of the employee, or death in the immediate family, leave with pay will be allowed up to a total of five (5) days a year, no more than three (3) of which will be allowed at one time, all sick leave being subject to verification by the Company's Medical Division.

No employee shall be terminated from the company payroll because of, or on account of his illness or non-occupational injury, provided the period of disability is not longer than six (6) months, and shall be reinstated upon recovery from illness after being pronounced physically and mentally fit by the Medical Unit of the Company.

Employees must notify the Company, if possible, within twenty-four (24) hours of physical disability.

Section 5—Military Service

(a). If any employee subject to the terms of this Agreement shall enter into the United States Government military service, either voluntarily or by conscription, such employee shall be granted leave of absence covering the period

of time in which he may be thus engaged in Government service without loss of seniority rights. Upon the termination of such Government service, if within forty- [31] five (45) days such employees shall request re-employment and if the employees are physically and mentally able to do the work available, the Company agrees to re-employ such persons in preference to all other persons in their occupations with less seniority.

(b) All employees granted time off or called to duty for United States Government military training, provided such period of training does not exceed sixty (60) days, in any branch of the military training program, shall receive for a period not to exceed thirty (30) days, the difference between their base military pay and the amount of base pay that would have been earned while working on their regular positions with the Company. This amount will be paid upon return from training and upon receipt of evidence of the amount received while engaged in such training.

Section 6—Educational Facilities

The Company shall continue to cooperate with the Union's Educational Committee to make certain educational facilities available to its employees, in order that they may receive training to qualify them for work in more than one department in the plants, if they so desire.

ARTICLE V—PAY PROVISIONS

Section 1—Periodic and Special Reviews

The rate and record of each employee shall be reviewed every six months with a view to wage adjustment in accord with his proven ability, production, etc. This periodic

review is not to be construed to mean that any employee is guaranteed an increase as a result of this review.

Reviews of employees shall be administered in such a way as to allow the Union to represent the employee at the time of his review. Any review that is not satisfactorily concluded automatically goes to Step 1 of the grievance procedure.

A special review for any employee shall be made in the event of a change of work or other condition which may warrant such special review. [32]

Section 2—Overtime Pay

Hours worked in excess of eight (8) hours in any one day of an employee's work week shall be paid for at one and one-half times the regular rate of the employee.

Time worked in addition to an employee's established work-week of forty (40) hours shall be paid for at the rate of one and one-half times the regular rate of the employee.

However, for time worked on the second overtime day of an employee's established work week, or after eight (8) hours of an employee's holiday, two times the regular rate shall be paid. For example, if an employee's established work week is Monday through Friday, then his second overtime day is Sunday for which he shall be paid two times the regular rate.

Section 3—Hours and Days of Work

(a) For all employees, eight (8) hours shall constitute a standard day's work to be performed within nine (9) consecutive hours.

(b) In the factory, the standard day shift shall be from 7:00 a.m. to 3:30 p.m.; the standard night shift shall be from 4:00 p.m. to 12:30 a.m.; and the standard third shift shall be from 12:30 a.m. to 7:00 a.m.

(c) In the office and technical departments, the standard day shift shall be from 8:00 a.m. to 4:45 p.m., or 7:30 a.m. to 4:00 p.m. or 4:15 p.m., except where the nature of the work requires that factory hours be maintained.

(d) All deviations from the standard shift hours shall be cleared with the Union and mutually agreed upon.

(e) Five (5) days, Monday through Friday, shall constitute the standard work week unless or until the Company is instructed by the Federal Government to alter or change the work schedule now in effect. However, the Company reserves the right to engage, alter, or rotate maintenance, personnel service, administrative service, or employees engaged in preparing the payroll to work five (5) consecutive days other than those constituting the standard work week. It is specifically agreed that these employees will not be engaged in production work. [33]

(f) All Sunday overtime shall be voluntary on the part of the employee.

Section 4—Premium for Hours and Days of Work

(a) Night shift employees shall receive a bonus of six (6) cents an hour.

(b) Third shift employees shall receive eight (8) hours' pay plus a six (6) cent an hour bonus for working six and one-half (6½) hours.

(c) All employees working other than the standard work week shall receive a premium of three (3) cents an hour in addition to other bonuses.

Section 5—Payroll Deductions—Union Fees

Payroll deductions for Union fees shall be made only upon receipt by the Company of written instructions from the individual employee and shall continue until cancelled in writing.

(a) The Company, subject to the above regulations, shall deduct from the pay check issued the second Friday of each month the Union dues for that month and shall forward same to the Financial Secretary of the Union, and shall be responsible to him for all such dues collected. In the case where there are no earnings by the employee during this week, a double deduction shall be made the following month. The Company shall not, however, be responsible for nonpayment of any dues of any Union member in the absence of written instructions from the employee to make deductions from pay therefor.

(b) Cancellation of payroll deductions for Union dues shall be made in the following manner: The employee shall give notice, in writing, of his or her desire for deductions to stop, and be delivered by him or her to the business office of the Union. Such cancellation must be delivered by the first day of the month for which the cancellation becomes effective. The Union shall forward this notice to the Industrial Relations office of the Company.

(c) Union membership fees shall be deducted upon the presentation to the Company of authorization signed by the employees. [34]

Section 6—Payroll Deductions—Company Reimbursement

Payroll deductions may be made to reimburse the Company as follows:

(a) All cost of tools and equipment issued to an employee but not returned by him, such cost to be subject to wear of the tools.

(b) For each tool check lost and not returned, the sum of twenty-five (25c).

(c) For money paid by the Company to a creditor or officer of the law for an indebtedness of an employee, providing demand is made upon the Company according to law.

(d) For any indebtedness due to the Company covering purchases made by an employee through the Company.

(e) For any loans or advances made to the employee by the Company.

(f) For each employee identification card or identification badge lost or destroyed, a sum of One Dollar ($1.00).

(g) For a lost key, a sum of One Dollars ($1.00).

Section 7—Report Time

An employee called to work shall receive a minimum of four (4) hours' pay in the shift to which he is called.

Section 8—Pay Periods and Methods

Pay checks for each employee shall be issued each Friday and shall represent the earnings of the employee to and including the previous Friday.

Section 9—Lost Time

Deductions for time off, whether due to tardiness or other causes, shall not be in excess of actual time lost.

Section 10—Change in Working Schedule

In the event of instructions from the Federal Government to alter or change the working schedule now in [35] effect, the Company may upon 15 days' written notice reopen negotiations with the Union to the end of amending such section of this contract as pertain to hours of work and/or overtime pay for the sole purpose of considering the objectives desired by the Government.

ARTICLE VI—PAY RATES

Section 1—Blanket Rate Increase

Each employee on the payroll of the Company as of July 1, 1941, shall receive an increase of $4.00 on his basic weekly rate. This increase of $4.00 per week shall be retroactive to July 1, 1941.

Section 2—Starting Rates of Pay

Employees shall receive a minimum rate of $24.00 per 40-hour week, which shall be increased to $26.00 per 40-hour week at the end of a period of four (4) full weeks from the date of employment and further increased to a minimum of $28.00 per 40-hour week at the end of a period of eight (8) full weeks from the date of employment, and further increased to a minimum of $30.00 per 40-hour week at the end of a period of twelve (12) full weeks of employment. No further automatic increases are mandatory.

Upon the completion of an additional twelve (12) working weeks, at a rate of no less than $30.00 per 40-hour week, each employee shall be classified and receive the minimum rate of pay for the classification.

Should any employee fail to make the progress necessary to merit an increase during this probationary period, this fact shall be deemed sufficient ground for immediate dismissal or transfer to another occupation, at the discretion of the Company.

The minimum starting rates of pay as outlined in this section shall be effective retroactive to July 1, 1941.

Section 3—Part-Time Supervision

Under Article 1, Section 2, full-time supervisory employees are excluded from this Agreement. Part-time [36] supervisory employees (at present designated as Leadmen and Group Heads) are represented by this Agreement. Employees who are responsible for the activities of a group and who spend a portion of their time supervising and part of their time working shall be considered part-time supervisory employees. Employees working in this classification shall be paid six (6) cents an hour more than the highest paid in their group.

Section 4—Application of Rate Changes

During a period of sixty (60) days from the date of the signing of this Agreement, there shall be no rate changes or rate reviews. During this period, the new starting rates and the blanket increase provided herein will be applied to all eligible employees and pay checks covering the retroactive features of this Agreement will be prepared. At the end of this period, the review provisions outlined in Article V, Section 1, will become effective.

In applying the new starting rates and the blanket increase the Company will first apply the $4.00 blanket increase and then make any adjustments necessary to meet the requirements of the new minimum starting rates as outlined in Section 2 of this Article.

Section 5—Changes in Rate Schedule

It is recognized that changing conditions and circumstances may, from time to time, require adjustment of wage rates because of inequalities, development of new manufacturing processes, changes in the content of jobs, or mechanical improvements brought about by the Company in the interest of improved methods and product. Under such circumstances the following procedure shall apply:

(1) When a new job or position is established

The Company will develop an appropriate rate and establish the rate to cover the job or position in question. The Union shall be informed by the Company in advance concerning such rates. The rate established may be opened for negotiations upon the request of the Union.

(2) When changes are made in equipment, method of processing, material processed, or quality or production [37] standards which would result in a substantial change in job duties or requirements; or where, over a period of time, an accumulation of minor changes of this type have occurred, which, in total, have resulted in a substantial change in job duties or requirements; or where a new job or position changes the job duties of an existing job, the Company may establish new rates which may be opened for negotiation upon request of the Union.

The acceptance and agreement to all of the above terms and conditions by either or both parties hereto are conditional upon the approval of the Office of Production Management, the War Department and the Navy Department.

Signed this fifteenth day of September, 1941.

For the Union

Negotiating Committee

Dale O. Reed President Aeronautical Lodge #727, I. A. M.

Lyle J. Aewey Recording Secretary

R. Cecil Manneny Charles L. Baugh Thomas E. McNett Charles H. Jones Theo. H. Sorenson

For the Company

Robert E. Gross President Lockheed Aircraft Corporation

Cyril Chappellet Secretary Lockheed Aircraft Corporation Vega Airplane Company

R. A. Von Haker Vice-Pres. in Charge of Mfg. Lockheed Aircraft Corporation

H. E. Ryker Vice-Pres. in Charge of Mfg. Vega Airplane Company

R. Randall Irwin Industrial Relations Director Lockheed Aircraft Corporation Vega Airplane Company

Approved:

Chas. Tigar Business Representative Aeronautical District Lodge #22

Geo. C. Castleman Vice-President, International Association of Machinists [38]

SUPPLEMENTAL AGREEMENT

It is hereby agreed by each of the undersigned that the existing agreement, bearing the effective date of September 15, 1941, between Lockheed Aircraft Corporation, a California corporation, and Vega Airplane Company, a California corporation, and Aeronautical Lodge 727 of Burbank of the International Association of Machinists, a non-profit association affiliated with the American Federation of Labor, shall be supplemented and amended as follows:

1. Vega Aircraft Corporation, a California corporation, acknowledges that it is the successor in interest of Vega Airplane Company, a California corporation, and hereby agrees to accept the benefits, and to be bound by each and all of the obligations, of the above described existing agreement of September 15, 1941, and the supplements and amendments to said existing agreement herein contained, in the same manner, and to the same extent, as its predecessor, Vega Airplane Company.

2. Aeronautical Industrial District Lodge 727, of Burbank, California, of the International Association of Machinists, a non-profit association affiliated with the American Federation of Labor, acknowledges that it is the successor in interest of Aeronautical Lodge 727 of Burbank of the International Association of Machinists, a non-profit association affiliated with the American Federation of Labor, and hereby agrees to accept the benefits, and to be bound by each and all of the obligations, of the above described existing agreement of September 15, 1941, and the supplements and amendments to said existing agreement herein contained, in the same manner, and to the same extent, as its predecessor, Aeronautical Lodge 727 of Burbank.

3. Page 3 of said existing agreement of September 15, 1941, constituting the Preamble, shall be amended to read as follows:

"This agreement entered into by and between Lockheed Aircraft Corporation, a California Corporation, and Vega Aircraft Corporation, a California Corporation, both hereinafter called 'the Company,' and the Inter- [39] national Association of Machinists, Aeronautical Industrial District Lodge 727, of Burbank, California, hereinafter called 'the Union,' a non-profit association affiliated with the American Federation of Labor, evidences the desire of the parties hereto to promote and maintain harmonious relations between the Company and its employees, and the willingness of the Company to deal with them through the Union as their representative."

4. The letter to employees provided for and contained in section 2 of Article I of said existing agreement shall be amended to read as follows:

"We are handing to you herewith a copy of the latest Agreement between Lockheed Aircraft Corporation and Vega Aircraft Corporation and Aeronautical Industrial District Lodge 727, of Burbank, California, of the International Association of Machinists, affiliated with the American Federation of Labor, arrived at as the result of negotiations between the management of the two Companies and representatives of the Union.

"In order that there may be no misunderstanding, the management affirms its sincere belief in the principles of collective bargaining, between manage-

ment representatives and duly elected representatives of employees, who are members of the Union, and this Agreement enumerates the benefits pertaining to wages, hours and working conditions which the employees now enjoy as a result of that method of dealing.

"Since March 12, 1937, Aeronautical Industrial District Lodge 727, of Burbank, California, International Association of Machinists, has been sole representative of Lockheed and Vega employees on matters pertaining to wages, hours and conditions incident to their employment. Your management affirms that the joint relationship with this Union has been continuous and harmonious.

"The management does not wish to suggest that membership in the Union is necessary to secured and continuous employment but appreciates the [40] advantage of knowing that the voice of the Union is in effect the voice of all its weekly salaried employees covered by this Agreement. It is our desire that all employees give due consideration to membership in the Union."

5. The name "Aeronautical Lodge 727" appearing in the description of signatories at page 24 of said existing agreement, shall be amended to read "Aeronautical Industrial District Lodge 727, of Burbank, California."

6. The name "Vega Airplane Company" appearing in Section 3, Article 1, page 6 of said existing agreement and in the description of signatories at page 24 of said existing agreement shall be amended to read "Vega Aircraft Corporation."

7. It is further understood and agreed by each of the undersigned that wherever in said existing agreement of September 15, 1941, the term "Company" appears, said term shall include "Vega Aircraft Corporation," a California corporation, in place of "Vega Airplane Company"; and that wherever in said agreement "Vega" appears, said term shall mean and refer to "Vega Aircraft Corporation," a California corporation in place of "Vega Airplane Company"; and that wherever in said agreement the terms "Union" or "Lodge 727" or either of them appears, said terms shall mean and refer to "Aeronautical Industrial District Lodge 727, of Burbank, California" in place of "Aeronautical Lodge 727 of Burbank."

8. It is further agreed by each of the undersigned that the title "Aeronautical Lodge 727 of Burbank" appearing on the title page of said existing agreement of September 15, 1941, and on each side of the payroll deduction card inserted in said agreement immediately following the title page, and on each side of the membership application card inserted at the end of said agreement, shall be in each instance amended to read "Aeronautical Industrial District Lodge 727, of Burbank, California."

9. It is further agreed by each of the undersigned that the respective benefits contained in said existing agreement of September 15, 1941, and the supplements and [41] amendments to said existing agreement herein contained, shall accrue to, and vest in, each of the undersigned, and that other than as set forth in the sup-

plements and amendments herein contained, said existing agreement of September 15, 1941, shall be and remain in full force and effect for the period stated in Section 3 of said agreement.

Dated, this 31st day of August, 1942.

For the Union

Dale O. Reed President—Aeronautical Industrial District Lodge 727, I. A. M.

W. M. Holladay Recording Secretary

Thomas E. McNett Pat Daly Robert Potter Fred L. Moore

For the Company

Robert E. Gross President Lockheed Aircraft Corporation

Cyril Chappellet Vice-Pres. - Lockheed Aircraft Corporation Secretary - Vega Aircraft Corporation

R. A. Von Haker Vice-Pres. in Charge of Mfg. Lockheed Aircraft Corporation

H. E. Ryker Vice-Pres. in Charge of Mfg. Vega Aircraft Corporation

R. Randall Irwin Industrial Relations Director Lockheed Aircraft Corporation, Vega Aircraft Corporation

Approved:

Geo. C. Castleman Vice-President, International Association of Machinists [42]

* * * * * * * * *

EXHIBIT "B"

AGREEMENT

between

Lockheed Aircraft Corporation

and

Aeronautical Industrial District Lodge 727

and

International Association of Machinists

Effective Date June 4, 1945 [45]

* * * * * * * * *

AGREEMENT

Between

Lockheed Aircraft Corporation, and

The International Association of Machinists and Aeronautical Industrial District Lodge 727

PREAMBLE

This Agreement entered into by and between Lockheed Aircraft Corporation, a California corporation, hereinafter called "the Company," and the International Association of Machinists and Aeronautical Industrial District Lodge 727, North Hollywood, hereinafter called "the Union," a non-profit organization affiliated with the American Federation of Labor, evidences the desire of the parties hereto to promote and maintain harmonious relations between the Company and its employees, and the willingness of the Company to deal with them through the Union as their representative.

ARTICLE I

GENERAL CONDITIONS OF CONTRACT

Section 1—Sole Agreement

This Agreement, when accepted by the parties hereto, and signed by their respective agents thereunto duly authorized, shall supersede all previous agreements by and between the parties hereto, and shall constitute the sole agreement between them.

Section 2—Exclusive Representation

(A) Definition of Bargaining Unit

For the period of this Agreement, the Company recognizes and accepts the Union as the exclusive representative of all the employees of the Company, except those listed in Subsection (B), for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. At the time of employment, the Company shall give each employee a copy of this Agreement.

(B) Employees Excluded from Bargaining Unit

(1) Officers of the Company appointed by its Board of Directors; [48]

(2) Salaried executive, administrative and professional employees, as defined by the Wage and Hour Division of the United States Department of Labor;

(3) All outside salesmen and representatives, as defined by the Wage and Hour Division of the United States Department of Labor;

(4) Guards;

(5) Firemen employed in plants outside the State of California;

(6) Employees in the occupations listed below for whom the National Labor Relations Board designated another collective bargaining agent, including employees in the classification of Field Service Man who upon investigation are shown to be engineering employees temporarily assigned to field duty:

Aerodynamicist
Aerodynamics Engineer
Construction Engineer
Contract Specifications Engineer
Design Specialist
Development Liaison Engineer
Draftsman
Electrical Engineer
Engineering Assistant
Engineering Designer
Engineering Draftsman
Process Analyst
Process Engineer
Procurement Engineer
Production Design Engineer
Research Engineer
Research Laboratory Analyst
Salvage Engineer
Service Engineer
Staff Engineer
Standards Analyst
Standards Engineer
Engineering Drawings Checker
Engineering Liaison Man
Enginering Technician
Flight Test Analyst
Flight Test Engineer [49]
Loftsman
Manufacturing Engineer
Material Analyst
Mathematician
Mechanical Design Engineer
Stress Analyst
Structures Engineer
Technical Computer
Technical Writer
Time Study Man
Tool Engineer
Tool Research Analyst
Weight Analyst
Weight Control Engineer
Wind Tunnel Test Engineer

Section 3—Period of Agreement

This Agreement shall remain in full force and effect until July 1, 1946, or for a period of one year from the date of its execution, whichever is the longer, and thereafter until amended or terminated as hereinafter provided. On June 15, 1946, or at the end of such one year period, whichever is the longer, or on any date thereafter, either party may give to the other written notice of desire for modifications or amendments. In addition thereto, on or after the National War Labor Board Directive Order of March 3, 1943, as heretofore or hereafter amended shall have been terminated or shall have ceased to be effective, either party may give to the other written notice of a desire for modifications or amendments of wage rates and other financial benefits under this Agreement. Any notice given under this Section for modifications or amendments shall specify the modifications or amendments desired and the parties agree to commence negotiations for such modifications or amendments within fifteen (15) days after the giving of such notice. In the event of the failure of the parties to reach an agreement on modifications or amendments within forty-five (45) days after the giving of such written notice either party may terminate this Agreement by written notice to the other.

In the event of instructions from the Federal Government to alter or change the working schedule now in [50] effect, the Company may upon fifteen (15) days' written notice reopen negotiations with the Union to the end of amending such sections of this contract as pertain to hours of work and or overtime pay for the sole purpose of considering the objectives desired by the Government.

Nothing herein shall preclude the Union from Petitioning the National War Labor Board for modification of its Directive Order of March 3, 1943, in the event that the Little Steel Formula should be modified.

Section 4—Performance Required

Either party hereto shall be entitled to require specific performance of the provisions of this Agreement. Any violation of the provisions of this Agreement on the part of any Company employee in a full-time supervisory capacity shall be considered as a violation of this Agreement on the part of the Company. Any violation of the provisions of the Agreement on the part of Union Chairmen and/or representatives shall be considered a violation of this Agreement on the part of the Union. Time is of the essence of this Agreement.

The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent for any further waiver of such breach or condition.

Section 5—Agreement Not Assignable

This Agreement is not assignable. In the event of change of management, or geographical location of plants, or sale of the Company, the present management shall use its best efforts to insure the continuation of this Agreement during its prescribed period.

Section 6—Right to Manage Plant

The Company has and will retain the right and power to manage the plant and direct the working forces, including the right to hire, to suspend or discharge for just cause, to promote, demote and transfer its employees, subject to the provisions of this Agreement. Any claim

that the Company has exercised such right and power contrary to the provisions of this Agreement may be taken up as a grievance.

Section 7—Apprenticeship Agreement

The Company shall maintain an apprenticeship agreement which shall be the subject of a separate agreement [51] between the Company and the Union and the California State Apprenticeship Council.

Section 8—Union Security

The National War Labor Board Directive Order of September 20, 1945 (Case No. 111-16460-D) provides as follows:

"(a) All employees, who, on October 9, 1945, are members of the Union in good standing in accordance with its Constitution and by-laws, and all employees who become members after that date, shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated, or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the National War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the fifteen-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the National War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date, or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties, or if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the National War Labor Board, on due application. The decision of the arbitrator shall be final and binding upon the parties. [52]

"*The Company, for said employees, shall deduct from the first pay of each month the Union dues for the preceding month and remit the same to the duly designated officer of the Union. The initiation fee of the Union shall be deducted by the Company and remitted to the Union in the same manner as dues collections."

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*This paragraph is applied as provided in Article VII, Section 5 of this Agreement.

ARTICLE II

UNION-COMPANY RELATIONS

Section 1—Strikes and Lockouts

For the duration of this Agreement the Union agrees that it will not cause or engage in any strike, slowdown or stoppage of work, and the Company agrees that it will not cause or engage in any lockout.

Section 2—Union Chairmen

As designated by the Union there shall be in the departments of the plant a Group Chairman for approximately every 35 to 50 employees and a Senior Chairman for each department or for every 9 Group Chairmen or fraction thereof. This shall apply to each shift. Once each year at a time designated by the Union, the Company shall permit all employees to vote on Company property and during working hours for Group Chairmen to serve them for the coming year. The voting shall be conducted under rules and regulations as may be established by the Union subject to the approval of the Company.

The Union will deliver to the Company once each month a current list of Senior Chairman by departments. The Union also agrees promptly to deliver to the Company written notices of any changes on such lists. As to any Senior Chairman of whose status as such Chairman the Company has had seven (7) days written notice, the Company will notify the Union four (4) days prior to the effective date of any permanent transfer of such Chairman.

Senior Chairmen will be permitted to take the necessary time off from work for the following Company-Union business:

(1) For the meetings with the Department Head provided for in Article III, Section 1. [53]

(2) For the weekly meeting with the Personal Representative to represent employees as provided for in Article VII, Section 1.

(3) For discussion with the Department Head of emergency complaints and grievances of employees.

Senior Chairmen and Group Chairmen will be permitted to take the necessary time off from work for the following Company-Union business:

(1) For so much of one-half hour of the shift, at a time mutually agreed upon by the Senior Chairman and the Foreman (normally the last half hour of the shift) as is required for Group Chairmen and Senior Chairmen to contact each other, for Chairmen to contact employees who have filed written grievances and for employees who have complaints to contact Chairmen.

(2) For discussion within the department with an authorized Business Representative of the Union when the latter finds it necessary to contact the Chairman on Company-Union business.

(3) For discussion with an employee of the employee's emergency complaint where the employee has obtained permission of his immediate full-time supervision to leave his work.

It is agreed that the contacts on Company time which are provided for in this Section will be no more frequent and no longer than the matter for discussion reasonably requires.

Section 3—Business Representatives and Union Officials

The Business Representatives of the Union shall have access to the Company's plants or to the departments of the Company's plants to which they are assigned, for the purpose of contacting Union Chairmen. Such visits shall be subject to such regulations as may be made from time to time by the Company, the U. S. Army, and the U. S. Navy. The Company shall not impose regulations which will exclude the Business Representatives from the plants nor render ineffective the intent of this provision.

No full-time Union official or Business Representative shall discuss any problem with employees (other than Chairmen) or with the supervision of any department, except as provided in Article III of the Agreement. [54]

Section 4—Cooperation

The Union and its members agree to report to the Company any acts of sabotage, subversive activities, theft, damage to or taking of any employee's, Company's and/or Government's property or work in process or materials, or any known threat of sabotage, subversive activities, or damage to or taking of such property, and the Union further agrees if any such acts occur to use its best efforts in assisting the Company and the Government to determine and apprehend the guilty party or parties.

Section 5—Bulletin Boards and Posting Notices

Space shall be provided on Company property at locations agreed upon for Union bulletin boards for the posting of the following types of notices:

(1) Notices of Union recreational and social affairs;

(2) Notices of Union elections;

(3) Notices of Union appointments and results of Union elections;

(4) Notices of Union meetings;

(5) Such other notices as may be mutually agreed upon by the Union and the Company.

The number of bulletin boards shall be governed by past practice.

Section 6—Solicitation of Memberships

Employees and Union Representatives shall not solicit union memberships or collect dues on Company property on the Company time of any employee, although such activities may be conducted by employees on Company property on the free time of the employees.

Section 7—Reports

The Union and the Company may request the following reports which are to be furnished as soon as possible; such requests shall be made only by the President or the Financial Secretary of the Union and the Director of Industrial Relations of the Company:

(1) Upon the request of the Company, the Union shall certify to the Company the number of its members.

(2) Upon the request of the Union, the Company shall certify to the Union, the number of employees [55] that are in the various occupational classifications recognized by this Agreement.

(3) Upon the request of the Union, the Company shall furnish the Union with lists of employees in their respective departments showing rates, classifications, and date of hiring and shifts.

(4) Upon hiring a new employee, the Company shall mail a copy of the hiring notice to the main Union Office at 5501 Lankershim Blvd., North Hollywood, within twenty-four (24) hours of the commencement of his employment.

ARTICLE III

GRIEVANCE PROCEDURE AND ARBITRATION

Section 1—Department Representation

Complaints arising out of employment shall, whenever possible, be concluded within the department by the cooperation of the Union Chairman and the supervisory staff. In order to accomplish this cooperative action the Department Head shall set aside a portion of one day per week to discuss with the Senior Chairman written grievances of employees which have been on file for not less than three working days and any problems arising regarding rates of pay, hours, and working conditions and the provisions of this Agreement. The Department Head shall set aside a portion of an additional day per week to discuss with the Senior Chairman written grievances of employees which have been on file for not less than three working days.

The days on which the Senior Chairman meets with the Department Head shall not be consecutive and shall not be longer apart than three working days.

Section 2—Method of Handling Grievances

An employee may first present his complaint to his Department Head, either in person or through his Union Chairman. However, if the employee so desires he may deliver a written grievance to his Senior Chairman and proceed in accordance with Step 1 of the grievance procedure.

The procedure on grievances shall be as follows:

Step 1. The employee shall state his grievance in writing on a form to be mutually agreed upon by the [56] Company and the Union and shall sign such grievance. The employee's Senior Chairman shall deliver such grievance to the Department Head and at the time of one of the regular meetings between the Department Head and the Senior Chairman an attempt shall be made to settle the grievance. However, if extremely urgent an attempt may be made to settle the grievance at the time of its delivery to the Department Head.

Step 2. The grievance may be presented by a Business Representative or an officer of the Union to the Industrial Relations Office of the Company and an attempt shall be made to settle the grievance.

Step 3. The grievance may be presented to the Labor Relations Subcommittee in accordance with the provisions of Section 3 of this Article and the Subcommittee shall attempt to settle the grievance.

Step 4. The grievance may be presented to the Labor Relations Committee and the Committee shall attempt to settle the grievance.

Step 5. The grievance may be presented to an arbitrator as provided in Section 5 of this Article.

The Company shall not confer with an employee with respect to a written grievance filed by him unless the employee's Senior Chairman has been notified and given an opportunity to be present.

The Union may file with the Industrial Relations Office of the Company written grievances, other than individual employee grievances, on a form to be mutually agreed upon by the Company and the Union with respect to any matter involving the interpretation or application of this Agreement. On such grievances Steps 1 and 3 shall be omitted and such grievances shall proceed as provided in Steps 2 and 4.

Grievances shall be filed promptly after the occurrence of the subject matter of the grievance. Matters occurring more than sixty (60) calendar days prior to the filing of a written grievance (fifteen (15) days on discharge, layoff and rehiring cases) shall not be made the subject matter of a grievance. Such time limit shall be extended where the delay in filing the grievance was due to the excusable neglect of the grieving employee or the Union. [57]

Grievances shall be promptly decided in each Step and if the aggrieved party desires to proceed to the next Step, such action shall be taken promptly. Grievances shall be deemed to be settled unless within fifteen (15) calendar days of the decision upon the grievance in any Step, the grieving party or the Union shall give written notice of

intent to proceed to the next Step. Such time limit shall be extended where the delay in proceeding to the next Step is due to the excusable neglect of the grieving employee or the Union.

Failure of the Company and the Union to reach a decision within six (6) working days in Step 1 and within fifteen (15) days in Step 2 shall entitle the grieving party to give written notice of intent to proceed to the next Step.

Section 3—Labor Relations Subcommittee

There shall be established a Labor Relations Subcommittee. The Subcommittee shall consist of four (4) members of the Union and four (4) representatives of the Company. The Subcommittee shall meet once each week except where no grievances are pending, and will handle all employee grievances which have proceeded through the previous steps of the grievance procedure without a settlement having been made.

The agenda for each meeting shall schedule those grievances on which written notice has been received by the Industrial Relations Office at least three (3) regular working days prior to the time of the meeting. Special meetings of the Subcommittee may be called by mutual consent. Any meeting may be cancelled or postponed with the mutual consent of the Union and the Industrial Relations Office of the Company.

Section 4—Labor Relations Committee

A Labor Relation Committee is hereby established which shall consist of representatives of the Union and the Company. The representatives of the Union shall consist of a board of five (5) elected members and the President and another official of the Union. The repre-

sentatives of the Company shall consist of a like number to be chosen in such manner as the Company may desire. This committee may establish subcommittees on a permanent or temporary basis. [58]

The Labor Relations Committee shall review and attempt to settle all grievances which shall remain unsettled after the procedure set forth in Sections 2 and 3 of this Article has been followed.

The decisions of the Labor Relations Committee shall be considered as final if a majority of the Union representatives and a majority of the Company representatives concur. If the committee fails to adjust a grievance either party may proceed as set forth in Section 5 of this Article.

A meeting of this Committee may be called by the Union or the Company to be held at a mutually agreeable date upon not less than three days' written notice served upon the other, provided, however, that such meeting shall be held within one week from receipt of such notice and that except by mutual consent no more than one meeting per week shall be held. Such notice shall specify the matters desired to be discussed at the meeting.

Section 5—Arbitration

Any grievance which has not been settled pursuant to Sections 2 through 4 of this Article and which involves the interpretation or application of this Agreement may be referred to arbitration. The Union shall deliver to the Company a written notice to that effect, including a statement of the issue to be arbitrated and the parties shall then by mutual agreement select an arbitrator.

Such arbitrator shall be paid by the parties hereto, and the expense of the arbitration shall be divided equally.

The arbitrator shall have the authority to interpret and apply the provisions of this Agreement, but shall not have authority to amend or modify this Agreement or to establish new terms and conditions of this Agreement.

There shall be no stoppage of work on account of any controversy which may be made the subject of arbitration, and the decision of the arbitrator shall be final and binding upon the Company, the Union and the employee, subject to the approval of the National War Labor Board where such approval is required. [59]

ARTICLE IV

SENIORITY

Section 1—Basis of Seniority

Seniority shall be the relative status of employees in respect of length of service with the Company, subject to the following qualifications:

(1) An employee hired to work at a plant outside the Los Angeles Metropolitan Area and remaining there or transferring from such plant to some other outlying plant, shall have seniority only at the outlying plant where he is working, dating from his original hire or rehire by the Company. A training period within the Los Angeles Metropolitan Area for service elsewhere shall not be considered as service in the Metropolitan Area. Pomona shall not be considered a part of the Metropolitan Area.

(2) An employee hired within the Los Angeles Metropolitan Area, or transferred to such area to work within it, shall have seniority within the Los Angeles Metropolitan Area dating from his original hire or rehire by the Company. In addition, if such

employee is thereafter transferred to an outlying plant, he shall also have seniority at the outlying plant where he is working dating from his original hire or rehire by the Company.

(3) An employee heretofore or hereafter transferred from an occupation covered by this Agreement to a salaried occupation shall continue to accumulate seniority, and in case of transfer to an occupation covered by this Agreement such seniority shall apply.

(4) An employee heretofore or hereafter transferred from an occupation covered by this Agreement to an hourly paid occupation not covered by this Agreement shall continue to accumulate seniority, and in case of subsequent transfer to an occupation covered by this Agreement such seniority shall apply. An employee hired within an hourly paid occupation not covered by this Agreement and thereafter transferred into an occupation covered by this Agreement, shall have seniority dating from his original hire or rehire by the Company. [60]

(5) Employees originally hired into the bargaining unit as set forth in the Agreement who left the Company to accept employment with Lockheed Overseas Corporation shall upon termination of their employment with Lockheed Overseas Corporation, be allowed immediately to return to employment with the Company with accumulated seniority.

(6) A part-time employee shall be entitled to credit for length of service in the same proportion that time regularly worked by such part-time employee bears to the time regularly worked by a full

time employee except for purposes of layoff and rehiring after a layoff.

For purposes of layoff, part-time employees shall not be considered to have acquired seniority.

Section 2—Establishment of Seniority Rights

Three months after an employee starts to work he shall acquire seniority rights and his seniority shall be retroactive to his starting date.

Section 3—Layoffs

(A) General Layoff Procedure. Layoffs shall be made in order of Company-wide seniority applied by occupation where ability, skill and efficiency are substantially equal. However, in the case of employees with four years' or more seniority, the Company may, in its discretion, retain them in order of their Company-wide seniority, regardless of occupation, where ability, skill and efficiency are substantially equal. Any claim of unjust discrimination in the exercise of such discretion may be taken up as a grievance. Employees who have not acquired seniority rights may be laid off without regard to relative length of service.

The word "occupation" as used herein, includes all grades and leadmen within an occupation.

(B) Temporary Layoffs. Temporary layoffs may be made for periods not exceeding fifteen (15) working days. Such layoffs shall be made in order of Company-wide seniority applied by occupation within the particular unit of organization, work unit or project affected where ability, skill and efficiency are substantially equal.

The word "occupation" as used herein includes all grades and leadmen within an occupation. [61]

(C) Emergency Reduction of the Working Force.

Step 1. When an emergency reduction of the working force is necessary, such as is occasioned by the cancellation of any contracts in whole or in part, the first step in the Emergency Reduction of the Working Force shall be the layoff of employees affected, without regard to the General Layoff Procedure, for the period of time necessary to put into effect Step 2.

Step 2. The second step of the Emergency Reduction of the Working Force shall be the carrying out of the General Layoff Procedure. Such assignments shall not be governed by the Rehiring Procedure and shall be made as promptly as is reasonably possible.

(D) Top Seniority for Union Chairmen for Purpose of Layoffs. For the purpose of applying the Temporary and General Layoff Procedures, Union Chairmen who have acquired seniority shall be deemed to have top seniority so long as they remain Chairmen. If the application of the General Layoff Procedure will result in the retention of more of such Chairmen in a group or department than are provided for in Article II, Section 2 of this Agreement, the Company shall prepare and furnish to the Union a list of all Chairmen in the locations where the surplus exists. The Union shall upon request of the Company promptly designate the Chairmen who are to remain in that capacity and the Chairmen not to be retained as Chairmen shall be governed by the seniority rules applicable to the layoff of other employees. During a Temporary Layoff and during the period between the first and second steps in an Emergency Reduction of the Working Force, the terms of office of laid-off Union Chairmen shall be deemed to continue.

Section 4—Rehiring

Laid-off employees in any occupation shall be rehired in order of Company-wide seniority applied by occupation where ability, skill and efficiency are substantially equal. However, in the case of employees with four years' or more seniority the Company may, in its discretion, rehire them in order of their Company-wide seniority, regardless of occupation where ability, skill and efficiency are substantially equal. Any claim of unjust discrimination [62] in the exercise of such discretion may be taken up as a grievance.

In the event an occupational seniority list is exhausted, the Company will rehire in such occupation, employees in order of Company-wide seniority regardless of occupation where ability, skill and efficiency are substantially equal.

The word "occupation" as used herein includes all grades and leadmen within an occupation.

If because of sickness, injury, or causes beyond his control a laid-off employee fails to report for an interview for work at or before a time specified by the Company on the second working day after the date on which the Company shall have sent a notice by wire or registered mail to such employee at his last address filed with the Company, or at such other date thereafter as the Company may designate, the employee shall not be entitled to the job but shall be entitled to hold his place on the seniority list and to be considered for the next vacancy for which he is eligible. The employee shall be required to furnish evidence of sickness or injury to the satisfaction of the Company's Medical Department.

Section 5—Physically Handicapped Employees

Physically handicapped employees (blind, those who are deaf and dumb, or have similar disabilities) may be retained or rehired regardless of the seniority principle stated in this Article in accordance with such mutual agreement as hereafter may be entered into between the Company and the Union.

Section 6—Employees Entering Armed Forces

Employees (other than temporary employees) who shall have left the employment of the Company for the purpose of entering the armed forces of the United States, shall be re-employed by the Company in accordance with the provisions of the Selective Training and Service Act of 1940, as such Act may be amended.

Section 7—Information to be furnished to the Union

(1) On General Layoff Procedure the Company will furnish the following:

(a) At the time of the application of the General Layoff Procedure, a copy of the seniority roster used [63] by the Company in applying such procedure; such seniority roster will list employees in the affected occupation in order of their seniority.

(b) Seniority roster by occupation of all laid-off employees as of a date immediately after the application of the General Layoff Procedure.

(c) In so far as is practicable, prior to the date of the layoff, the anticipated date, the approximate size and the probable occupations affected.

(2) On an emergency reduction of the working force the Company will furnish the Union the following after adjustments have been made in accordance with the General Layoff Procedure:

(a) Seniority roster by occupation of employees in the service of the Company in the occupations affected as of a date immediately preceding the adjustments;

(b) Seniority roster by occupation of employees in the service of the Company in the occupations affected as of a date immediately after the adjustments;

(c) Seniority roster by occupation of all laid-off employees as of a date immediately after the application of the General Layoff Procedure.

(3) The Company will furnish the Union a monthly list of employees dropped from lists (1)(b) and (2)(c) by reason of loss of seniority.

Section 8—Loss of Seniority

An employee shall lose his seniority upon the happening of any one of the following events:

(1) Resignation (a five-day unreported absence without a reasonable explanation shall be considered a resignation);

(2) Discharge for just cause;

(3) If, after a layoff, the employee is notified to report for an interview for work, by registered mail, or telegram, addressed to him at the last address filed by him with the Company, and fails within one (1) week after notification or such additional time as the Company may

grant either to report for an interview or to deliver to the Company a reasonable excuse for failure to report; [64]

(4) Failure, after an interview, to report for work at the time designated by the Company or to furnish to the Company a reasonable excuse for failure to report;

(5) Failure to give written notice of his availability for employment together with his then current address delivered by registered mail, telegram, or in person to the Industrial Relations Office of the Company every thirty (30) days after a layoff or to furnish, within one (1) week after the expiration of the thirty-day period, a reasonable excuse for failure to give such written notice;

(6) Layoff for a period of twelve (12) consecutive months. If the Company should, within six (6) months after the expiration of twelve (12) consecutive months following a layoff, rehire an employee who had acquired seniority, such employee shall be credited with the seniority he held at the expiration of such twelve-month period.

Section 9—Promotion and Upgrading

On promotion to higher rated jobs within the bargaining unit, and on upgrading from lower grades to higher grades in the same occupation, consideration shall first be given to those employees within the smallest unit under full-time supervision where the opening exists; then within the department; then within the division; then within the branch; then within the Company.

In selecting an employee for such promotion or upgrading to an available opening the following standards shall apply:

(1) Availability for release—Production requirements will be considered insofar as they pertain to the release of an employee from his present job. In general the release of an employee for promotion or upgrading will be granted unless it is determined by supervision at the office level that, because of production requirements, the employee cannot be released.

(2) Where ability, skill and efficiency are substantially equal, preference shall be given to the most senior qualified employee within the applicable unit.

(3) The fact that an employee has been at the maximum rate of his grade for sixteen (16) weeks shall be given full consideration.

(4) Employee preference as indicated by employee [65] written requests filed with the Company shall be given full consideration.

Section 10—Transfers

Transfers shall be made on the basis of operational requirements of the Company. On transfers to vacancies, consideration will be given to employees who have filed written requests with the Company and, subject to operational requirements, such requests will be considered on the basis of seniority where ability, skill and experience are substantially equal. Such consideration will be given first to such employees within a department; then within the division; then within the branch; then within the Company. The word "transfers" as used herein does not apply to promotions to higher rated jobs; to upgrading from lower grades to higher grades in an occupation or to downgrading to lower rated jobs.

Section 11—Downgrading

Employees may be downgraded to lower rated jobs only for the following reasons:

(1) For unsatisfactory performance on the employee's present job.

(2) In the event continued performance of employee's present job will injure the health of the employee.

(3) In the event there are changes in production methods, production schedules or changes in the method of doing the job, which either eliminate or materially change the work performed by the employee to such an extent that the majority of the work performed by, or assigned to the employee, falls within the job description of a lower rated job.

(4) The National Labor Board Directive Order of September 20, 1945 (Case No. 111-16460-D) provides as follows:

"In the event an employee is not properly classified in accordance with the job description in effect. However, any employee who has been classified in his present job for 16 weeks or longer shall be conclusively presumed to be receiving the proper rate. The Company shall not downgrade him except in accordance with one of the other subdivisions of this section. The Company shall be permitted, however, upon proof that the employee is mis-[66] classified, to reclassify him in another job at a rate no lower than that which he presently receives. In that event, the employee shall receive at least 10 days' notice of such reclassification. If the employee contests the Company's finding that he has been misclassified, he may file a grievance."

The employee shall be notified at or before the time of his assignment to a lower rated job of the date on which his change in rate and classification are to be made effective. At the time of such notification, he shall be permitted to file with the Company a written request for transfer.

Downgrading from a higher grade to a lower grade within an occupation into vacancies caused by the laying off of employees, shall be made within the employee's department on the basis of seniority where ability, skill and efficiency are substantially equal. If the Company should transfer an employee to another department and then downgrade him, such downgrading shall be made in that department in accordance with the principles in this paragraph.

When management deems its necessary in the interest of production efficiency to temporarily (less than three months) assign employees to work on lower rated jobs, no change in classification or pay rate shall be effected. When management deems it necessary to assign employees either temporarily or permanently to lower rated jobs, management will at the time of change notify the employees of the nature of the change and whether it is temporary or permanent. In the event such temporary assignment exceeds three (3) months, said lower rated job shall be considered a vacancy and be filled accordingly.

ARTICLE V

EMPLOYMENT CONDITIONS

Section 1—Sanitary, Safety and Health Conditions

The Company agrees to maintain sanitary, safe and healthful conditions in all its plants and working establishments in accordance with the laws of the State, County

and City of its place of operation. Proper and modern safety devices shall be provided for all employees [67] working on hazardous or unsanitary work, such devices (except articles of clothing) to be furnished by the Company. No employee shall be discharged for refusing to work on a job not made reasonably safe or sanitary for him, or that might unduly endanger his health.

All recommendations and grievances concerning sanitation, safety, health and other working condition factors will be presented through the procedure set forth in Article III.

One member of each of the Company's General Safety Committees shall be elected by the Union.

Section 2—Hiring Age

The Company agrees that there shall be no established maximum age limit in the hiring of employees.

Section 3—Employment Not Jeopardized

Union membership or legitimate Union activity will not jeopardize an employee's standing with the Company or opportunity for advancement.

Section 4—Educational Facilities

The Company shall continue to cooperate with the Union's Educational Committee to make certain educational facilities available to its employees, in order that they may receive training to qualify them for work in more than one department in the plants, if they so desire.

ARTICLE VI

EMPLOYEE PRIVILEGES

Section 1—Vacations

(A) Vacation Service and Privileges of an Employee on the Active Pay Roll of the Company:

(1) An employee with less than five (5) years' seniority on his vacation eligibility date shall be entitled to one (1) week's vacation with pay. In addition thereto each such employee who has not used all of his sick and injury leave during the year of service preceding his vacation eligibility date shall, at his option, be entitled to one additional week's vacation, with pay for such unused sick and injury leave, or to pay for such unused sick and injury leave without an additional week's vacation. [68]

(2) An employee with five (5) years' or more seniority on his vacation eligibility date shall be entitled to two (2) weeks' vacation with pay.

(3) An employee's vacation eligibility date occurs upon the first day of the month in which he will have accumulated one year of service subsequent to his last vacation eligibility date or, in case of an employee's first vacation, subsequent to the date when he started to work.

(4) Pay for a week's vacation for a full-time employee shall be construed as follows:

(a) If, at the time of an employee's vacation eligibility date, a majority of the employees in the plant in which he is employed are regularly scheduled to work in excess of five (5) standard daily shifts per week, pay for one week's vaca-

tion means pay for forty-eight (48) hours at the employee's regular base rate of pay on such eligibility date.

(b). If, at the time of an employee's vacation eligibility date, a majority of the employees in the plant in which he is employed are regularly scheduled to work five (5) standard daily shifts per week, pay for one week's vacation means pay for forty (40) hours at the employee's regular base rate of pay on such eligibility date.

(c) An employee's regular base rate of pay does not include overtime; shift bonus, or any other premium.

(5) Pay for unused sick and injury leave shall be construed as an amount equal to the hours of unused sick and injury leave times the employee's base rate of pay at his vacation eligibility date.

(6) Pay for the vacation of an employee who is a part-time employee as of his vacation eligibility date shall be proportionately reduced. For example, an employee who is regularly scheduled to work six (6) days per week, four (4) hours each day, will be entitled to one (1) week's vacation with pay for twenty-four (24) hours at the employee's base rate of pay. [69]

(B) Vacation Service and Privileges of an Employee Who Terminates, or is Terminated, Laid-Off or on Leave of Absence:

(1) An employee who has become entitled to a vacation with pay and who hereafter terminates or is terminated or laid off prior to the taking of his vacation shall receive such pay as he is entitled to

under the provisions of subdivisions (A) (1) or (A) (2) of this Section.

(2) Until the termination of the period of the Unlimited National Emergency proclaimed by the President of the United States, or until the National War Labor Board's Directive Order of March 3, 1943, In the Matter of the West Coast Airframe Companies, as heretofore or hereafter amended, has been terminated or has ceased to be effective, the following employees shall be paid pro rata vacation pay for a portion of a year of service:

(a) An employee who has become eligible for a vacation and who, prior to his next vacation eligibility date, is laid off under such circumstances that the Company anticipates that the layoff will last more than ninety (90) days or if the layoff lasts more than ninety (90) days and the employee makes written request for such payment.

(b) An employee who shall have terminated his employment on or after March 3, 1943, in order to enter the armed forces, regardless of whether he shall have then become entitled to his first vacation.

(3) After the termination of said Unlimited National Emergency, or after said Directive Order of the National War Labor Board has been terminated, or has ceased to be effective, no prorated vacation allowance shall be paid to any employee.

(4) For the purpose of acquiring vacation privileges, an employee shall be credited with all service

accumulated up to the time of his termination, layoff or leave of absence provided:

(a) He returns to work for the Company after the period of such termination, layoff or leave of absence; and [70]

(b) He retains his seniority rights with the Company during such period; and

(c) He was not paid a prorated vacation allowance.

(5) Time spent by an employee during a period when he is severed from the active payroll due to termination, layoff or leave of absence shall not constitute service time for the purpose of acquiring vacation privileges; provided, however, that time lost, not to exceed six (6) months, due to occupational injury or occupational illness shall be counted for the purpose of computing service time if the employee returns to the active payroll of the Company.

(C) Transition from Existing Vacation Plan in Respect to Certain Employees Hired Prior to March 1, 1941:

(1) The vacation eligibility date of an employee hired prior to March 1, 1941, who has less than five (5) years' seniority at the time this Section shall have become effective and who shall reach the fifth anniversary of his seniority date prior to March 1, 1946, shall be the first day of the month in which such fifth seniority anniversary date occurs.

(2) On such vacation eligibility date, such employee shall be entitled to the vacation privileges established in subdivision (A) (2) of this Section. Thereafter, his vacation eligibility date shall be as provided in subdivision (A) (3) of this Section.

(D) Scheduling of Vacations:

(1) Vacations shall not be cumulated from one year to another but must be taken within twelve months after the eligibility date except that one vacation shall not be taken within two months of the next vacation.

(2) Vacations shall be taken when they interfere least with production. So far as is practicable vacation time preference will be given to employees with the greatest seniority.

(E) Prior Service Time:

This Section shall be applicable to all employees who become eligible for vacation privileges subsequent to the date of approval of the Section by the National War Labor Board.* Service time prior to the date of [71] such approval shall count toward an employee's vacation eligibility date.

(F) Effective Date:

This Section is subject to the approval of the National War Labor Board and shall become effective upon such approval.*

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*Approved June 8, 1945.

Section 2—Sick and Injury Leave

(A) Sick and Injury Leave Benefits of an Employee on the Active Pay Roll:

(1) In the event of an employee's occupational or non-occupational sickness or injury, or in the event of his absence because of death in his immediate family, such employee shall be entitled to a total of six (6) days' sick and injury leave with pay during each year of his service. Such leave shall not exceed three (3) days at any one time. No sick and injury leave shall be paid for part-day absences. An employee shall not be entitled to use his sick and injury leave until after he has completed twelve (12) weeks' continuous service from the date when he starts to work.

(2) A full-time employee means an employee who is regularly scheduled to work five or more standard daily shifts per week.

(3) Pay for one day's sick and injury leave for a full-time employee means pay for eight (8) hours at the employee's regular base rate of pay. An employee's regular base rate of pay does not include overtime, shift bonus, or any other premium.

(4) Pay for sick and injury leave of a part-time employee shall be proportionately reduced.

(B) Sick and Injury Leave Benefits of an Employee Who Terminates or is Terminated, Laid Off or on Leave of Absence:

(1) Service time of an employee shall be accumulated toward his year of service regardless of termination, layoff or leave of absence provided:

(a) He returns to work for the Company after the [72] period of such termination, layoff or leave of absence; and

(b) He retains his seniority rights with the Company during such period; and

(c) He was not paid a prorated vacation allowance.

(2) Time spent by an employee during a period when he is severed from the active pay roll due to termination, layoff or leave of absence shall not constitute service time for the purpose of acquiring sick and injury leave benefits; provided, however, that time lost, not to exceed six (6) months, due to occupational injury or occupational illness shall be counted for the purpose of computing service time if the employee returns to the active pay roll of the Company.

(3) Termination, layoff or leave of absence shall not entitle an employee to be paid any pro rata allowance for unused sick and injury leave for a portion of a year of service.

(C) Verification and Notification:

All sick and injury leave is subject to verification by the Company's Medical Division. An employee shall notify the Company within twenty-four (24) hours of his illness or injury or death in his immediate family requiring his absence from work or furnish a reasonable excuse for failure to notify the Company.

(D) Prolonged Disability:

An employee shall not be terminated by the Company because of a prolonged continuous illness or injury provided the period of disability is not longer than six (6) months and, upon being pronounced physically and mentally fit by the Company, shall be reinstated to the same or substantially equivalent job if such job is available to him in accordance with his seniority rights.

Prior Service Time:

Service time prior to the date of approval of this Section by the National War Labor Board* shall count toward an employee's year of service.

Effective Date:

This Section is subject to the approval of the National War Labor Board and shall become effective upon such approval.* [73]

Section 3—Holidays

(1) The Company recognizes the following six (6) legal holidays: New Year's Day; Memorial Day; Fourth of July; Labor Day; Thanksgiving Day; and Christmas Day.

(2) Full pay (eight (8) hours at straight time) shall be paid to all employees whenever one of these holidays falls on Monday through Friday or on Saturday if the work schedule of the majority of employees includes Saturdays. In addition, straight time shall be paid for hours worked on holidays up to eight (8) hours; thereafter two times the regular rate shall be paid.

*Approved June 8, 1945.

(3) In order to be eligible for holiday pay, an employee must have worked or have been on a vacation or a paid leave (other than paid sick leave) on the day before or the day after the holiday; except that when the holiday falls on the day before employment or the day after termination, or during an employee's vacation or leave, no pay under this Section shall be granted.

(4) Should a recognized holiday fall upon a Sunday, the Monday immediately following shall be observed as the holiday.

(5) During such period as pay for holidays is restricted by Executive Order 9240,** or other law or regulation, the premium pay rate for hours worked on any of said holidays, as provided in Subdivision (2) of this Section, shall be one and one-half times the employee's regular rate of pay.

Section 4—Leaves Without Pay

Leaves of absence without pay may be granted employees for a period not to exceed ten (10) working days during the year. For good and sufficient reason the Company may extend the period of the leave. The leave of absence shall not in any way jeopardize the employee's standing with the Company.

On all leaves of absence of ninety (90) calendar days or less, an employee shall accumulate seniority. On leaves of absence exceeding ninety (90) calendar days, seniority shall accumulate after ninety (90) days only if specified by the terms of the leave; provided, however, that on leaves of absence heretofore or hereafter granted for [74] Union business of Lodge 727, the employee shall accumulate seniority during such leaves.

**Executive Order 9240 was revoked August 21, 1945.

The Union may request, and the Company will grant, leaves of absence of three (3) days or more without pay, to Union members for Union business of Lodge 727 and excused absences of less than three (3) days without pay to Union members for Union business of Lodge 727. Such leaves and excused absences will be requested only in reasonable numbers and at reasonable times upon twenty-four (24) hours' written notice to the Company except when such notice is waived by mutual agreement.

ARTICLE VII

PAY PROVISIONS

Section 1—Periodic and Special Reviews

The rate and record of each employee shall be reviewed every sixteen weeks with a view to wage adjustment in accord with his proven ability, production, etc. This periodic review is not to be construed to mean that any employee is guaranteed an increase as a result of this review.

Periodic reviews of employees shall be administered in such a way as to allow the Union to represent the employee at the time of his review. Any such review that is not satisfactorily concluded automatically goes to Step 2 of the grievance procedure.

A special review for any employee shall be made in the event of a change of work or other condition which may warrant such special review.

Section 2—Overtime Pay

(1) Hours worked in excess of eight (8) hours in any one day of an employee's work week shall be paid for at one and one-half times the regular rate of the employee.

(2) During such period as overtime pay is restricted by Executive Order 9240* or other law or regulation, the following provisions shall be applicable:

(a) For purposes of computing overtime pay, the work week shall consist of seven (7) consecutive days commencing on Monday of each calendar week and ending on the following Sunday.

(b) An employee shall be paid time and one-half his regular rate of pay for work performed on his sixth day worked in the [75] work week, and two times his regular rate of pay for work performed on his seventh day worked in the work week.

(c) In computing the sixth day worked in the work week, days upon which an employee works any portion of the day shall be counted as days worked.

(d) In computing the sixth day worked in the work week, days upon which an employee is absent the full day for any reason shall not be counted as days worked, except:

1. Designated holidays on which no work is performed.

2. Days on which an employee reports with the reasonable expectation of work and is sent home because of a lack of work or other reason beyond his control.

3. Paid vacation days.

4. Paid days of service as an election officer at a federal, state or municipal election.

5. Days upon which certain Union officers and committeemen are absent for certain purposes, such officers and committeemen and purposes to be mutually agreed upon by the Company and the Union.

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*Executive Order 9240 was revoked August 21, 1945.

(e) In computing the seventh day worked in the work week, days upon which an employee is absent for part of the day without justifiable reason shall not be counted as days worked; provided, however, that it shall be permissible for the employee to make up the time lost by such voluntary absence by work on the seventh day of the work week and to be compensated at the rate of double time for those hours worked on such seventh day after the time lost has been made up. "Justifiable reasons" for part day absences under this Section are as follows:

1. Illness or injury of the employee;

2. Critical illness or death in the immediate family of the employee;

3. Required appearance before Draft Board for Selective Service business;

4. Authorized Union Business, cleared through the Industrial Relations Office of the Company;

5. Compulsory witness or jury duties;

6. Service as an election officer at a federal, state, or municipal election;

7. Leaving work at Company direction.

(f) In computing the seventh day worked in the work week, days upon which an employee is absent the full day for any reason shall not be counted as days worked, except designated holidays on which no work is performed and days on which an employee reports with the reasonable expectation of work and is sent home because of a lack of work or other reason beyond his control.

(g) An employee shall not receive overtime pay for work on Saturday or Sunday or any particular day of the work week as such.

(3) In the absence of restrictions on overtime pay under [76] Executive Order 9240* or other law or regulation, the following provisions shall be applicable:

(a) Each employee whose regular day off in his regularly scheduled work week is Sunday shall be paid time and one-half his regular rate of pay for work on Saturdays and two times his regular rate of pay for work on Sundays.

(b) Each employee whose regular day off in his regularly scheduled work week is other than Sunday shall be paid time and one-half his regular rate of pay for work on the day preceding his regular day off, and two times his regular rate of pay for work on his regular day off.

Section 3—Hours and Days of Work

(1) For all employees eight (8) hours shall constitute a standard day's work to be performed within nine (9) consecutive hours.

(2) In the factory, the standard day shift shall be from 7:00 a. m. to 3:30 p. m.; the standard night shift shall be from 4:00 p. m. to 12:30 a. m.; and the standard graveyard shift shall be from 12:30 a. m. to 7:00 a. m.

(3) In the office and technical departments, the standard day shift shall be from 8:00 a. m. to 4:45 p. m., or 7:30 a. m. to 4:00 p. m. or 4:15 p. m., except where the nature of the work requires that factory hours be maintained.

(4) An employee commencing his work day between the hours of 4:00 a. m. and 10:59 a. m. is considered to be in the day shift rate period. An employee commencing

*Executive Order 9240 was revoked August 21, 1945.

his work day between the hours of 11:00 a. m. and 8:29 p. m. is considered to be in the night shift rate period. An employee commencing his work day between the hours of 8:30 p. m. and 3:59 a. m. is considered to be in the graveyard shift rate period.

(5) For firemen the standard day shift shall be either 7:00 a. m. to 3:00 p. m. or 8:00 a. m. to 4:00 p. m.; the standard night shift shall be either 3:00 p. m. to 11:00 p. m. or 4:00 p. m. to 12:00 midnight; the standard graveyard shift shall be either 11:00 p. m. to 7:00 a. m. or 12:00 midnight to 8:00 a. m. Variations from such standard shift hours may be established by mutual agree- [77] ment between the Company and the Union. Firemen shall be on duty during their entire shift period.

(6) All deviations from the standard shift hours shall be cleared with the Union and mutually agreed upon.

(7) Five (5) days, Monday through Friday, shall constitute the standard work week, unless or until the Company is instructed by the Federal Government to alter or change the work schedule now in effect. However, the Company reserves the right to engage, alter, or rotate maintenance, personnel service, administrative service, firemen or employees engaged in preparing the pay roll to work five (5) consecutive days other than those constituting the standard work week. It is specifically agreed that these employees will not be engaged in production work. Maintenance employees shall not be assigned to odd work weeks except for the purpose of accomplishing work which cannot, within the reasonable judgment of the Company, be accomplished during the standard work week without interfering with the operation of the Company.

(8) Overtime work shall be voluntary only on Sunday or in case of an odd work week employee, only on his regular day off. Any claim of an employee that he has been required to work unreasonable or excessive overtime may be made the subject of a grievance.

Section 4—Premium for Hours and Days of Work

(1) Night shift employees shall receive a bonus of six (6) cents an hour.

(2) Third shift employees shall receive eight (8) hours' pay plus a six (6) cent an hour bonus for working six and one-half (6½) hours.

(3) All employees working other than the standard work week shall receive a premium of three (3) cents an hour in addition to other bonuses.

Section 5—Pay Roll Deductions for Union Fees and Dues

The Company will deduct from his wages, and turn over to the Union, the Union initiation fee and dues of each employee who individually and voluntarily authorizes the Company in writing to make such deductions. Such pay roll deductions shall be made in accordance with the following provisions:

(1) Such pay roll deductions shall be made only in [78] accordance with instructions upon authorization cards. Such cards shall be in the size and form presently used subject to change by mutual agreement between the Company and the Union. In order to become effective, the authorization cards shall be delivered by the Union to the Pay Roll Department of the Company.

(2) Deductions for the initiation fee shall be made from the employee's pay check for the first pay period

ending in each month in the amount and from the number of such checks as specified by the employee on the fee deduction authorization card.

(3) Deductions for dues shall be made from the employee's pay check for the first pay period ending in each month in the amount specified by the employee on the dues deduction authorization card. In the event a deduction for dues is not made on one or more consecutive regular pay roll deduction dates due to lack of earnings or insufficient earnings by the employee, then on the next regular pay roll deduction date that the employee has sufficient earnings one double deduction shall be made.

(4)* Cancellation of pay roll deductions for Union dues shall be made in the following manner: The employee shall give notice, in writing, of his or her desire for deductions to stop, and be delivered by him or her to the business office of the Union. The Union shall forward this notice to the Pay Roll Department of the Company.

(5) In order to begin or stop such pay roll deductions, written notice must be received by the Pay Roll Department of the Company at least two weeks prior to the regular pay roll deduction date.

The Company's obligations to make such deductions shall terminate in the event the employee should cease to be an employee as defined in Article I, Section 2 of this Agreement.

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*See also Article I, Section 8—Union Security.

Section 6—Pay Roll Deductions—Company Reimbursement

Pay roll deductions may be made to reimburse the Company as follows:

(1) All costs of tools and equipment issued to an em-
79] ployee but not returned by him, such cost to be subject to wear of the tools.

(2) For each tool check lost and not returned, the sum of twenty-five cents (25c).

(3) For money paid by the Company to a creditor or officer of the law for an indebtedness of an employee, provided demand is made upon the Company according to law.

(4) For any indebtedness due to the Company covering purchases made by an employee through the Company.

(5) For any loans or advances made to the employee by the Company.

(6) For each employee identification card or identification badge lost or destroyed, a sum of one dollar ($1.00).

(7) For a lost key, a sum of one dollar ($1.00).

Section 7—Report Time

An employee called to work shall receive a minimum of four (4) hours' pay in the shift to which he is called.

Section 8—Pay Period

Pay checks to employees shall be issued within eight (8) days after the end of the pay period and shall represent the earnings of the employee from Monday to and including Sunday of such pay period.

Section 9—Lost Time

Deductions for time off, whether due to tardiness or other causes, shall be at the rate of one-tenth of an hour's pay for each tenth of an hour or fraction thereof lost from work.

ARTICLE VIII

PAY RATES

Section 1—National War Labor Board Directive Order

The National War Labor Board Directive Order of March 3, 1943, as heretofore or hereafter amended shall govern the relations between the parties. In applying the grievance and arbitration procedure, such Directive Order shall be considered a part of this Agreement. If such Directive Order should be terminated or cease to be effective, its provisions shall continue to govern the relations between the parties until this Agreement is modified, amended or terminated. [80]

Section 2—Pay for Leadmen

Leadmen shall be paid six (6) cents an hour more than the highest paid employee in the group led.

Section 3—Job Descriptions and Evaluations and Wage Rate Schedules

The National War Labor Board Directive Order of September 27, 1945 (Case No. 111-16460-D) provides as follows:

"The Company and the Union, as promptly as possible, shall restudy and rewrite all job descriptions currently in effect within the bargaining unit or which become effective during the terms of this agreement.

"Each job shall be evaluated in accordance with an evaluation plan which is to be mutually agreed upon by the Union and the Company. Wage rates established, based upon the mutually agreed upon evaluations, shall be subject to the approval of any Federal agency then having jurisdiction thereover."

Dated this 4th day of June, 1945.

Aeronautical Industrial District Lodge 727 of Burbank

By Thomas E. McNett President

John P. Cooney Wm. C. Martin Frank J. Keefe Gary Garrett C. O. McEfee William Phillips

International Association of Machinists

By Roy M. Brown Vice President

Lockheed Aircraft Corporation

By Robert E. Gross President

Courtlandt S. Gross Vice President & General Manager

Cyril Chappellet Vice President

William W. Aulepp Director, Industrial Relations [81]

* * * * * * * * *

[Endorsed]: Filed Nov. 27, 1946. Edmund L. Smith, Clerk.

[Title of District Court and Cause]

ANSWER OF RESPONDENT LOCKHEED AIRCRAFT CORPORATION, A CORPORATION

To the Honorable the Judges of the District Court of the United States in and for the Southern District of California, Central Division:

Now comes Lockheed Aircraft Corporation, a corporation, respondent herein, in answering petitioners' petition on file herein admits, denies and alleges as follows:

I.

Answering paragraph IV of said petition on file herein, respondent admits that the petitioners, and each of them, were, upon their application therefor, reemployed and restored to their former positions in the employ of respondent. Other than heretofore admitted, said respondent denies each and every and all of the allegations in the said paragraph IV of petitioners' petition on file herein. [88]

II.

Answering paragraph VIII of said petition on file herein, respondent admits that during the later part of June, 1946, the respondent made a general layoff of field and service mechanics, grade "A", and that in the course thereof, each of the petitioners was laid-off. Respondent further admits that at the time said petitioners, and each of them, were laid-off, as aforesaid, respondent retained in its active employ certain Union chairmen with less

seniority, i. e., "length of service with the Company", than petitioner's. Other than heretofore admitted, respondent denies each and every and all of the allegations in the said paragraph VIII of petitioners' petition on file herein.

III.

Answering paragraph IX of said petition on file herein, respondent admits that the petitioners were laid-off on the respective dates set forth in the said paragraph of said petition, and further admits that the respondent, at the time of said layoff of said petitioners, retained in its active employ in the occupation group in which petitioners were employed certain Union chairmen who had less seniority, i. e., "length of service with the Company", than any of the petitioners. Respondent further admits that the ability, skill and efficiency of the petitioners, and each of them, was substantially equal to that of any of the Union chairmen so retained, and that the layoff of said petitioners, and each of them, as aforesaid, was made on the sole basis of Company-wide seniority and in accordance with the provisions of the collective bargaining agreement then in effect between respondent and Aeronautical Industrial District Lodge #727 of the International Association of Machinists. Other than heretofore admitted, said respondent denies each and every and all of the allegations in the said paragraph IX of petitioners' petition on file herein.

IV.

Answering paragraph X of said petition on file herein, respondent admits that following the aforesaid layoff petitioners Campbell and Joplin were restored to active employment by respondent on July 15, 1946, and that petitioner Kirk was [89] restored to active employment by respondent on July 16, 1946. Other than heretofore admitted, said respondent denies each and every and all of the allegations in the said paragraph X of petitioners' petition on file herein.

Wherefore, Respondent Respectfully prays:

That judgment be entered in favor of said respondent and against said petitioners, denying to said petitioners, and each of them, the relief sought in the said petition or any other relief and awarding to respondent its costs of suit incurred herein.

ROGER B. SMITH
ROBERT H. CANAN
MARK E. TRUE
Attorneys for Respondent
By Mark E. True [90]

[Verified.]

[Endorsed]: Filed Dec. 13, 1946. Edmund L. Smith, Clerk. [91]

In the District Court of the United States in and for the Southern District of California
Central Division

No. 6028-B Civil

JAMES L. CAMPBELL, MITCHELL B. JOPLIN, and MALCOLM E. KIRK,

Petitioners,

vs.

LOCKHEED AIRCRAFT CORPORATION, a corporation,

Respondent,

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Intervener.

ANSWER OF AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727

Leave of Court having first been secured, comes now the Aeronautical Industrial District Lodge 727 of the International Association of Machinists, an unincorporated Association, as intervener herein, and in answer to the petitioner's Petition on file herein, admits, denies and alleges as follows:

I.

Admits all the allegations contained in paragraphs III, IV, V, VI and VII of the Petition.

II.

Answering Paragraph VIII of said Petition on file herein, respondent admits that during the later part of

June, 1946, the respondent made a general layoff of field and service mechanics, [92] grade "A", and that in the course thereof, each of the petitioners was laid off. Respondent further admits that at the time said petitioners and each of them, were laid off, as aforesaid, respondent retained in its active employ certain Union Chairmen with less seniority, i. e., "length of service with the Company", than petitioners'. Other than heretofore admitted, respondent denies each and every and all of the allegations in the said paragraph VIII of petitioners' petition on file herein.

III.

Answering paragraph IX of said Petition on file herein, respondent admits that the petitioners were laid off on the respective dates set forth in said paragraph of said Petition, and further admits that the respondent, at the time of said layoff of said petitioners, retained in its active employ in the occupation group in which petitioners were employed certain Union chairmen who had less seniority, i. e., "length of service with the Company", than any of the petitioners. Respondent further admits that the ability, skill and efficiency of the petitioners, and each of them, was substantially equal to that of any of the Union chairmen so retained, and that the layoff of said petitioners, and each of them, as aforesaid, was made on the sole basis of Company-wide seniority and in accordance with the provisions of the collective bargaining agreement then in effect between respondent and Aero-

nautical Industrial District Lodge #727 of the International Association of Machinists. Other than heretofore admitted, said respondent denies each and every and all of the allegations in the said paragraph IX of petitioners' petition on file herein.

IV.

Answering paragraph X of said Petition on file herein, respondent admits that following the aforesaid layoff, petitioners Campbell and Joplin were restored to active employment by respondent on July 15, 1946, and that petitioner Kirk was restored to active [93] employment by respondent on July 16, 1946. Other than heretofore admitted, said respondent denies each and every and all of the allegations in said paragraph X of petitioners' petition on file herein.

For a Second, Separate, Distinct and Affirmative Defense, this answering defendant in intervention alleges:

I.

That the plaintiff, James L. Campbell, became affiliated with and became a member of the organization of this answering intervener on or about the 2nd day of November, 1942, and terminated his membership therein on or about the 1st day of March, 1946; that the plaintiff, Mitchell B. Joplin, became affiliated with and became a member of the organization of this answering intervener on or about the 18th day of November, 1943, and ever since and has been and still is a member and affiliated with

this answering intervener; that the plaintiff, Malcolm E. Kirk, became affiliated with and became a member of the organization of this answering intervener on or about the 12th day of August, 1943 and ever since and has been and still is a member and affiliated with this answering intervener.

II.

That at all times during which the petitioners were employed by the respondent, Lockheed Aircraft Corporation, the seniority of employees was and is governed and controlled by contractual obligations made and entered into by and between the respondent, Lockheed Aircraft Corporation and this answering intervener; that copies of the said collective bargaining agreements are attached to the Petition on file herein and are incorporated herein by reference thereto.

III.

That all seniority rights of the petitioners were, and are covered by the aforesaid collective bargaining agreements; that had [94] the petitioners been steadily employed by the respondent, Lockheed Aircraft Corporation at all times mentioned in the Petition and continuously between the respective dates of their original employment and the dates of their respective reemployment, the seniority rights of the petitioners and each of them as of the dates of their respective reemployment, would be fixed and determined by the terms and conditions of the aforesaid agreements by reason of the agreements between

Lockheed Aircraft Corporation and this answering intervener and by reason further of the petitioners being at all times members of this answering intervener.

IV.

That upon reemployment after military service of the petitioners by the respondent, Lockheed Aircraft Corporation, the petitioners, and ~~each~~ of them, were restored to the position of seniority and with all of the rights attendant to their said respective positions of seniority as if the said petitioners had been continuously employed by the said corporation and as the said rights were and would have been as of the dates of their respective reemployment without regard for their respective absence while in military service.

Wherefore, this answering intervener prays that petitioners take nothing by their petition and that the relief sought by the petitioners, and each of them, be denied; that judgment be entered in favor of this answering intervener against the petitioners, and each of them, and for such other and further relief as to the Court may seem meet and just in the premises.

HINDIN, WEISS AND G'RARD
By Maurice J. Hindin
Attorneys for Aeronautical Industrial District Lodge 727 [95]

[Verified.]

[Endorsed]: Lodged Dec. 17, 1946. Filed Jan. 6, 1947. Edmund L. Smith, Clerk. [96]

[Title of District Court and Cause.]

STIPULATION

Without waiving any objection as to the materiality of any of the facts herein set forth and reserving to each the right to offer any other evidence desired, the parties to this suit, by and through their respective counsels, do hereby stipulate and agree that the following facts are true and correct and that this stipulation may be treated as sufficient proof of the facts herein contained, to-wit:

1. Respondent, Lockheed Aircraft Corporation, now is, and throughout the period covered by the pleadings herein has been, a corporation organized under and pursuant to the laws of the State of California, with its principal place of business at Burbank, California, and respondent now is, and throughout the period covered by the pleadings herein has been, engaged in the manufacture [97] of airplanes.

2. Intervenor, Aeronautical Industrial District Lodge 727 of the International Association of Machinists, now is, and throughout the period covered by the pleadings herein has been, an unincorporated association, and said intervenor now is, and through the period covered by the pleadings herein has been, the duly certified collective bargaining agency which has negotiated with respondent, Lockheed Aircraft Corporation, the agreements attached to and made a part of the complaint on file herein, which said agreements are marked respectively Exhibit "A" and Exhibit "B".

3. Petitioner James L. Campbell became affiliated with and became a member of the organization of intervenor on or about the 2nd day of November, 1942; and ter-

minated his membership therein on or about the 1st day of March, 1946, but this did not affect his status as an employee of the respondent Company.

4. Petitioner Mitchell B. Joplin became affiliated with and became a member of the organization of intervenor on or about the 18th day of November, 1943, and ever since has been and now is a member and affiliated with said intervenor.

5. Petitioner Malcolm E. Kirk became affiliated with and became a member of the organization of intervenor on or about the 12th day of August, 1943, and ever since has been and now is a member and affiliated with said intervenor.

6. Petitioner James L. Campbell was first employed by Vega Aircraft Corporation (which corporation was thereafter merged with and made a part of Lockheed Aircraft Corporation) on August 17, 1942, and continued in the employ of that corporation until February 26, 1944, at which time he terminated said employment in order to perform training and service in the armed forces of the United States under the requirements of the Selective Training and Service Act of 1940. At the time of said termination petitioner Campbell was employed by Lockheed Aircraft Corporation as a Field and Service Mechanic "B" at the rate of pay of $1.20 per hour. Petitioner Campbell entered the armed forces of the United States on April 10, 1944, and continued in such service until October 28, [98] 1945, on which date he was honorably discharged. Thereafter on November 15, 1945, petitioner Campbell applied to the respondent for reemployment in his former position, and on November 27, 1945, was reemployed and restored to his position as

Field and Service Mechanic "A" in the respondent's employ at the hourly rate of $1.30.

7. Petitioner Mitchell B. Joplin was first employed by Lockheed Aircraft Corporation on April 19, 1943, and continued in the employ of that corporation until May 28, 1945, at which time he terminated said employment in order to perform training and service in the armed forces of the United States under the requirements of the Selective Training and Service Act of 1940. At the time of said termination, petitioner Joplin was employed by Lockheed Aircraft Corporation as a Field and Service Mechanic "A" at the rate of pay of $1.50 per hour. Petitioner Joplin entered the armed forces of the United States on June 4, 1945, and continued in such service until November 23, 1945, on which date he was honorably discharged. Thereafter on December 5, 1945, petitioner Joplin applied to the respondent for reemployment in his former position, and on December 10, 1945, was reemployed and restored to his position as Field and Service Mechanic "A" in the respondent's employ at the hourly rate of $1.50.

8. Petitioner Malcolm E. Kirk was first employed by Vega Aircraft Corporation (which corporation was thereafter merged with and made a part of Lockheed Aircraft Corporation) on August 5, 1942, and continued in the employ of that corporation until May 31, 1944, at which time he terminated said employment in order to perform training and service in the armed forces of the United States under the requirements of the Selective Training and Service Act of 1940. At the time of said termination, petitioner Kirk was employed by Lockheed Aircraft Corporation as a Field and Service Mechanic "B" at the rate of pay of $1.20 per hour. Petitioner

Kirk entered the armed forces of the United States on June 2, 1944, and continued in such service until January 12, 1946, on which date he was honorably discharged. Thereafter on February 8, 1946, petitioner Kirk applied to the respondent for reemployment in his former position, and on March 7, 1946, was reemployed and restored to his position as Field and Service Mechanic "B" in the respondent's employ at the hourly rate [99] of $1.44.

9. At the time of the induction of the petitioner, and each of them, into military service there was in effect between respondent and its employees, represented by intervenor, a collective bargaining agreement, dated September 15, 1941, regulating the wages, hours and working conditions of those employees, including petitioners, and each of them, who were represented by intervenor. Said agreement provided in part as follows:

(a) "This Agreement shall become effective upon its signature and shall remain in force until July 1, 1943, or for the period of the Unlimited National Emergency proclaimed by the President of the United States, whichever is longer, and thereafter until thirty (30) days after either party hereto shall give to the other written notice of desire for change or termination. During such thirty-day period, conferences shall be held by and between the parties hereto with a view to arriving at further agreement. Notices permitted or required to be served under the terms of this Agreement shall be sufficiently served for all purposes herein when mailed postage prepaid, registered mail; return receipt requested, to Robert E. Gross, or his successors, Lockheed Aircraft Corporation, Burbank, California, and/or Courtlandt S. Gross,

or his successor, Vega Aircraft Company, Burbank, California, for service upon the Company, and when similarly mailed to Dale O. Reed, President of the Union, at 147 North Palm Avenue, Burbank, California, or to the successor of him if and when information has been supplied to the Company of the name and address of such successor, and the date of such notice shall be the controlling date for all purposes hereunder." (Article I, Section 3.)

(b) "This Agreement may be amended or added to at any time by the written consent of both parties hereto. However, after one year from date of the signing of this Agreement, either party may, after fifteen (15) days' written notice, open negotiations only on items directly affecting wage rates and other financial benefits [100] for employees. However, if the national emergency shall have extended beyond July 1, 1943, either party may at that time, after fifteen (15) days' written notice, terminate the Agreement or negotiate amendments on any item of the Agreement. This Agreement shall remain in full force and effect during negotiations on amendments." (Article I, Section 4.)

(c) "Six months after an employee is hired his seniority shall be retroactive to the date of his hiring. Rehiring is governed by the sections following." (Article III, Section 1.)

(d) "All employees granted time off or called to duty for United States Government military training, provided such period of training does not exceed sixty (60) days, in any branch of the military

training program, shall receive for a period not to exceed thirty (30) days, the difference between their base military pay and the amount of base pay that would have been earned while working on their regular positions with the Company. This amount will be paid upon return from training and upon receipt of evidence of the amount received while engaged in such training." (Article IV, Section 5(b).)

(e) "In case of a slack in production, layoffs are to be made primarily on the basis of the principle of seniority. Due consideration will be given, however, to (a) knowledge, training; ability, skill and efficiency, and (b) department record and other factors. If it becomes necessary to reduce the working force in any plant or department, a plan of layoff procedure will be prepared by the management and submitted to the Union for approval. If such plan is not acceptable to the Union the Company agrees to enter negotiations with the Union and to attempt to arrive at a mutually agreeable plan. If, however, at the end of one working week from the date the Company submitted its original plan of layoff procedure to the Union no new plan has been mutually agreed to, the Company may proceed according to its proposed plan of layoff [101] subject to Article II, Section 6.

"To enable the Union to determine that the principle of seniority and the procedure are adhered to, the Company will provide the Union prior to a layoff with a list of all employees it intends to release." (Article III, Section 5.)

(f) "As designated by the Union there shall be in the departments of the plant a department chairman for approximately every 35 to 50 employees and a senior chairman for each department or for every 9 department chairmen or fraction thereof. This shall apply to each shift. Once each year at a time designated by the Union, the Company shall permit all employees to vote on Company property and during working hours for a Union Chairman to serve them for the coming year. The voting shall be conducted under rules and regulations as may be established by the Union subject to the approval of the Company." (Article II, Section 4.)

A copy of said bargaining agreement dated September 15, 1941, is attached hereto, marked Exhibit "A", and is by this reference incorporated herein.

10. On June 4, 1945, and while the petitioners, and each of them, were serving in the armed forces of the United States as aforesaid, respondent and intervenor, on behalf of those employees whom it represented, entered into and executed a collective bargaining agreement. Said agreement of June 4, 1945, provided among other things as follows:

(a) "Seniority shall be the relative status of employees in respect of length of service with the Company, subject to the following qualifications: . . ." (Article IV, Section 1.)

(b) "Employees (other than temporary employees) who shall have left the employment of the Company for the purpose of entering the armed forces of the United States, shall be re-employed by the

Company in accordance with the provisions of the Selective Training and Service Act of 1940, as such Act may be amended." (Article IV, Section 6)

(c) "General Layoff Procedure. Layoffs shall be made in order of [102] Company-wide seniority applied by occupation where ability, skill and efficiency are substantially equal. However, in the case of employees with four years' or more seniority, the Company may, in its discretion, retain them in order of their Company-wide seniority, regardless of occupation, where ability, skill and efficiency are substantially equal. Any claim of unjust discrimination in the exercise of such discretion may be taken up as a grievance. Employees who have not acquired seniority rights may be laid off without regard to relative length of service. "The word 'occupation' as used herein, includes all grades and leadmen within an occupation." (Article IV, Section 3(A).)

(d) "As designated by the Union there shall be in the departments of the plant a Group Chairman for approximately every 35 to 50 employees, and a Senior Chairman for each department or for every 9 Group Chairmen or fraction thereof. This shall apply to each shift. Once each year at a time designated by the Union, the Company shall permit all employees to vote on Company property and during working hours for Group Chairmen to

serve them for the coming year. The voting shall be conducted under rules and regulations as may be established by the Union subject to the approval of the Company." (Article II, Section 2.)

(e) "Top Seniority for Union Chairmen for Purpose of Layoffs. For the purpose of applying the Temporary and General Layoff Procedures, Union Chairmen who have acquired seniority shall be deemed to have top seniority as long as they remain Chairmen. If the application of the General Layoff Procedure will result in the retention of more of such Chairmen in a group or department than are provided for in Article II, Section 2 of this Agreement, the Company shall prepare and furnish to the Union a list of all Chairmen in the locations where the surplus exists. The Union shall upon request of the Company promptly designate the Chairmen who are to remain in that capacity, and the Chairmen not to be retained as Chairmen shall [103] be governed by the seniority rules applicable to the layoff of other employees. During a Temporary Layoff and during the period between the first and second steps in an Emergency Reduction of the Working Force, the terms of office of laid-off Union Chairmen shall be deemed to continue." (Article IV, Section 3(D).)

A copy of said agreement dated June 4, 1945, is attached hereto, marked Exhibit "B" and is by this reference incorporated herein.

11. Said collective bargaining agreement of June 4, 1945, is now and at all times since June 4, 1945, has been in full effect and operation.

12. During the latter part of June, 1946, and within one year of the reemployment of petitioners, and each of them, respondent made a general layoff of certain Field and Service Mechanics whose employment was covered by the above-mentioned collective bargaining agreement dated June 4, 1945, and in the course of said general layoff petitioners Campbell and Kirk were laid-off on June 21, 1946, and petitioner Joplin was laid-off on June 24, 1946.

13. At the time the petitioners, and each of them, were laid-off as aforesaid, and throughout the period each of the petitioners was so laid-off, respondent retained in its active employ as a Field and Service Mechanic, F. K. Pierson, a Union Chairman, who was first employed by respondent on, and whose Company seniority with respondent dated from, July 12, 1944, although the ability, skill and efficiency of the petitioners, and each of them, was substantially equal to that of said Union Chairman so retained, and the petitioners, and each of them, were qualified to perform the work in which said Union Chairman was employed at that time.

14. The petitioners, and each of them, thereupon protested against their being laid-off as aforesaid and the retention of said Union Chairman with less seniority in respondent's active employment, and thereafter petitioners

Campbell and Joplin were restored by respondent to active employment on July 15, 1946, and petitioner Kirk was so restored on July 16, 1946.

15. Had the petitioners, and each of them, not been laid-off they would have received from respondent as salary for their services during said period the following sums: James L. Campbell—$168.00; Mitchell B. Joplin—$124.56; [104] and Malcolm E. Kirk—$190.00.

Dated: January 24, 1947.

JAMES M. CARTER
United States Attorney
RONALD WALKER and
JAMES C. R. McCALL, JR.
Assistant United States Attorneys
By James C. R. McCall, Jr.
Attorneys for Petitioner

ROGER B. SMITH
ROBERT H. CANAN and
MARK E. TRUE
By Mark E. True
Attorneys for Respondent

HINDIN, WEISS AND GIRARD
By Maurice J. Hindin
Attorneys for Intervenor

[Endorsed]: Filed Jan. 24, 1947. Edmund L. Smith, Clerk. [105]

[Title of District Court and Cause]

MOTION OF INTERVENOR FOR REHEARING, OR FOR NEW TRIAL

Comes now, Aeronautical Industrial District Lodge 727, intervenor in the above captioned matter, and respectfully moves the Court for a rehearing, or for a new trial upon the following grounds:

1—That the ordered and proposed Judgment is contrary to the law.

2—That the proposed conclusions of law are erroneous and constitute errors of law.

3—That since date of the Order for Judgment, questions of law directly and materially affecting the substantial rights of parties have been decided by the Circuit Court of Appeals, and that the said decisions of the Circuit Court of Appeals materially affect the matters contained in this action. [138]

Intervenor's Motion is made and based upon Memorandum of Points and Authorities attached hereto, upon this Motion, and upon all the records and files of the above captioned action.

Wherefore, intervenor prays that a rehearing may be granted, or in lieu thereof, that a new trial may be granted herein and for such other and further Orders as to the Court may be meet and just in the premises.

Dated: June 25, 1947.

HINDIN, WEISS AND GIRARD

By Maurice J. Hindin

Attorneys for Intervenor. [139]

MEMORANDUM OF POINTS AND AUTHORITIES.

I.

Rights of a veteran to reemployment and to seniority rights are subject to the terms and provisions of collective bargaining agreements in effect at the time the reemployment of a veteran is sought, not at the time of his induction into the service, provided that such contract does not discriminate against veterans as such. A veteran's rights to seniority and reemployment under Selective Service Act are subject to changes in seniority provisions in collective bargaining agreements during the time he is in service. A change in seniority provisions which provides for top seniority for certain Union officers is a reasonable provision and does not discriminate against veterans. Under such circumstances, a veteran is not entitled to seniority rights above such Union officers notwithstanding that he is credited with longer period of employment, and notwithstanding that these top seniority provisions were not in effect at the time of his induction.

Gauweiler vs. Elastic Stop Nut Corp., (U. S. Circuit Court of Appeals, Third Circuit, Case No. 9253, decided May 20, 1947) (12 L. C. #63,783.

Koury vs. Elastic Stop Nut Corp., (U. S. Circuit Court of Appeals, Third Circuit, Case No. 9272, decided May 20, 1947) 12 L. C. #63,784.

DiMaggio vs. Elastic Stop Nut Corp., (U. S. Circuit Court of Appeals, Third Circuit, Case No. 9271, decided May 20, 1947) 12 L. C. #63,785.

Payne vs. Wright Aeronautical Corp., (U. S. Circuit Court of Appeals, Third Circuit, Case No. 9216, 9217, 9227, decided May 20, 1947) 12 L. C. #63,786.

II.

A new trial may be granted in actions tried without a jury for any of the reasons for which rehearings have heretofore been [140] granted in suits in equity in Courts of the United States.

Federal Rules of Civil Procedure, Rule 59 (a).

III.

The Court has power to order a rehearing under Rule 59 (a) 2.

Seymour vs. Potts and Callahan, 2 F. R. D. 38.

Respectfully submitted,

HINDIN, WEISS AND GIRARD

By Maurice J. Hindin

Attorneys for Intervenor [141]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 25, 1947. Edmund L. Smith, Clerk. [142]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

The above-entitled case was submitted to the Court after argument of counsel, on an agreed stipulation of facts by the parties, dated January 24, 1947, and the Court adopts such stipulation and an additional stipulation entered into in open court July 15, 1947, as its findings of fact herein.

CONCLUSIONS OF LAW

1. The petitioners are reemployed veterans of the armed forces of the United States, and are entitled to the benefits of Section 8 of the Selective Training and Service Act of 1940, as amended (50 U. S. C. A. App. Sec. 308) and Section 7 of the Service Extension Act of 1941, as amended (50 U. S. C. A. App. Sec. 357). [143].

2. During petitioners' absence in the armed forces, and prior to their restoration in their former positions in the respondent's employ, the collective bargaining agreement between the respondent and the intervening union, regulating working conditions in those positions, was changed in such manner as to accord to union chairmen, employed in similar positions, "top seniority" over all other like employees, in the event of lay-offs due to curtailment of work. Prior to this change, and at the time when the petitioners left their positions to enter the armed forces, the collective bargaining agreement provided for lay-offs on the basis of straight seniority, alone. This change in the seniority system at the plant tended to alter ad-

versely, the seniority status of reemployed veterans, and thereby to diminish the reemployment benefits which Congress secured to them by law; and the attempted change was, as to reemployed veterans, void and of no effect during their statutory year of reemployment.

3. Within one year after his restoration to his former position as flight and service mechanic, each of the petitioners was laid off, due to curtailment of work, while a union chairman with less seniority than any of the petitioners, was continued in active employment by the respondent in their job classification, under the "top seniority" provision of the intervenor's contract above mentioned; and by reason of such action, the petitioners suffered losses of wages as follows: James L. Campbell, $168.00; Mitchell B. Joplin, $124.56; and Malcolm E. Kirk, $190.00. The petitioners are entitled to be compensated by the respondent for such loss of wages.

4. A judgment requiring the payment of such compensation and the costs of the case will be entered herein against respondent.

Dated: ~~May~~ July 17, 1947.

C. E. BEAUMONT
United States District Judge

Approved as to form as required by Rule 7(a).

Dated: May 12th, 1947.

MARK E. TRUE
Attorney for Respondent

MAURICE J. HINDIN
Attorney for Intervenor

[Endorsed]: Filed Jul. 17, 1947. Edmund L. Smith, Clerk. [144]

In the District Court of the United States in and for the Southern District of California
Central Division

No. 6028-B Civil

JAMES L. CAMPBELL, MITCHELL B. JOPLIN and MALCOLM E. KIRK,

Petitioners,

vs.

LOCKHEED AIRCRAFT CORPORATION, a corporation,

Respondent,

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Intervenor.

JUDGMENT

This case was tried and submitted by the parties upon the entire record in the case, including a stipulation of facts dated January 24, 1947, and the Court having considered the same, and orally stated its opinion on the issues, and made and entered its Findings of Fact and Conclusions of Law, it is

Ordered, Adjudged and Decreed by the Court, as follows:

(1) That respondent Lockheed Aircraft Corporation pay to the petitioners the amount of their respective losses of wages, as follows: James L. Campbell, $168.00; Mitchell B. Joplin, $124.56; and Malcolm E. Kirk, $190.00; and pay the court costs incurred by the United States herein. [145]

(2) That provisions of the collective bargaining agreement executed between respondent corporation and intervenor union, dated June 4, 1945, and more particularly seniority provisions with reference to union chairmen, is inapplicable and not binding upon the petitioners.

(3) That execution may issue for the sums decreed to be paid.

Dated: this 17th day of ~~May~~ July, 1947.

C. E. BEAUMONT
United States District Judge

Approved as to form as required by Rule 7(a)
Dated: May ....., 1947.

.....
MARK E. TRUE
Attorney for Respondent

.....
JAMES C. R. McCALL, JR.
Attorney for Petitioners

Judgment entered July 17, 1947. Docketed July 18, 1947. Book 44, page 280. Edmund L. Smith, Clerk; by Francis E. Cross, Deputy.

[Endorsed]: Filed Jul. 17, 1947. Edmund L. Smith, Clerk. [146]

[Title of District Court and Cause]

NOTICE OF APPEAL

Notice is hereby given that Aeronautical Industrial District Lodge 727, an unincorporated association, Intervenor in the above captioned action hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the Final Judgment entered in the above captioned action on the 17th day of July, 1947, (Civil Order Book No. 44, page 280).

Dated: this 9th day of Sept., 1947.

HINDIN, WEISS AND GIRARD
By Maurice J. Hindin
Attorneys for Appellants, Aeronautical Industrial District Lodge, 727,
111 West 7th St., Los Angeles 14, Cal. [147]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Sep. 9, 1947. Edmund L. Smith, Clerk. [148]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 153, inclusive, contain full, true and correct copies of Petition for Enforcement of Veterans' Reemployment Rights; Answer of Respondent Lockheed Aircraft Corporation; Answer of Aeronautical Industrial District Lodge 727; Stipulation; Petitioners' Trial Memorandum; Intervener's Trial Memorandum; Trial Memorandum of Respondent Lockheed Aircraft Corporation; Motion of Intervenor for Rehearing or for New Trial; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Bond on Appeal and Designation of Record on Appeal which, together with copy of Reporter's Transcript of proceedings on April 25, 1947 and July 15, 1947, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to $27.40 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 2 day of October, A. D. 1947.

(Seal) EDMUND L. SMITH
Clerk

By Theodore Hocke
Chief Deputy Clerk

[Title of District Court and Cause]

Honorable Campbell E. Beaumont, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Friday, April 25, 1947

Appearances:

For the Petitioners: James M. Carter, United States Attorney; by Ronald Walker, Assistant United States Attorney, Chief of Civil Division; and James C. R. McCall, Jr., Assistant United States Attorney.

For the Respondent: Roger B. Smith, Robert H. Cahan, Mark E. True, Legal Department, Lockheed Aircraft Corporation, Burbank, California.

For the Intervener Aeronautical Industrial District Lodge No. 727: Hindin, Weiss and Girard, 111 West 7th Street Building, Los Angeles, California.

Los Angeles, California, Friday, April 25, 1947.
1:30 p. m.

The Court: The court asked you gentlemen to come in here on the case of Campbell v. Lockheed.

Did you get the names of those appearing, Mr. Clifton?

The Clerk: Yes, I did, your Honor.

The Court: The last time you were here we were all in agreement, I believe, that it would be advisable for the court to await the decision in the Trailmobile case.

This has now come down. It appears to the court from the statements made by the Supreme Court in its opinion—perhaps the statements were there in the decision of the

Court of Appeals but not so clearly set forth as in the Supreme Court's decision—that the action complained of was beyond the statutory period of one year. That is the period with which the decision is chiefly concerned.

I suppose all of you agree with the court that it is clear in the Trailmobile case that the acts were after the one-year period; is that correct?

Mr. Hindin: In the instant case, your Honor?

The Court: In the Trailmobile case.

Mr. Hindin: Yes, your Honor.

Mr. True. In the Trailmobile case.

Mr. McCall: Yes, that is true.

Mr. Hindin: Yes. [3*]

The Court: So for that reason I say factually it does not have the compelling force in this case that we probably thought it did when we were here before.

Now, I had prepared for reading a short statement when this matter came up last time we were in court; and if I had decided it then, my decision would have been based on that memorandum.

I have not changed my mind at all since that time, and I shall just read the statement that I had prepared.

In the case at bar an agreement was entered into by intervener and respondent, while petitioners were absent in the military service. As the result of this agreement petitioners were "laid off," while a union chairman was retained. The chairman had less seniority than petitioners and was kept at work solely by virtue of this agreement.

*Page number appearing at top of page of original Reporter's Transcript.

Intervener relies largely on the case of Fishgold v. Sullivan, 328 U. S. 275. I do not view such case as binding herein because of factual difference (1). Also it must be borne in mind that the court in that case said that no agreements "between employers and union can cut down the service adjustment benefits" secured to veterans under the act. Certainly seniority is one of such benefits, and this bene- [4] fit was "cut down" by the agreement between employer and union.

In reaching the conclusion that the petitioners are entitled to prevail here, it does not mean that the court is "granting the veteran an increase in seniority over what he would have had if he had never entered the armed services" or that he has received a "step-up or gain in priority" within the inhibition of the Fishgold case. He is not being given something new by way of advancement; he is merely restored to the seniority position he had when he left for military service, plus the time accumulation for his military absence to which he is, in any event, clearly entitled. In other words, he merely steps back upon the same step of the senority escalator on which he was standing when he stepped off to enter the military service. The union chairman either was on a lower step or took his position on the escalator while the veteran was absent. No agreement between employer and union made in the veteran's

(1) In the Fishgold case the men preferred over the veteran had a higher shop seniority than the veteran.

absence could give the chairman a place above him in seniority.

I think I might add that after reading the Trailmobile case I believe there is a part here which well could be read as having the same construction as was placed by myself upon that point.

This is on page 18 of the advance sheet of the opinion and it refers to the Fishgold case. This is the statement: [5]

> "For the statutory year indeed this meant that the restored rights could not be altered adversely by the usual processes of collective bargaining or of the employer's administration of general business policy. . . ."

In other words, that principle involved there is the very basis upon which I felt that this case should be decided. Therefore, judgment is ordered for the petitioners.

[Endorsed]: Filed 6/2/47. Edmund L. Smith, Clerk. [6]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Fresno, California, Tuesday, July 15, 1947.

Appearances:

For the Petitioners: James M. Carter, United States Attorney, by James C. R. McCall, Jr., Assistant United States Attorney.

For the Respondent: Mark E. True, Esq., Legal Department, Lockheed Aircraft Corporation, Burbank, California.

For the Intervenor: Hindin, Weiss and Girard, by Maurice Hindin, Esq., 111 West 7th Street Building, Los Angeles, California.

Fresno, California, Tuesday, July 15, 1947.
10:00 a. m.

The Court: I have considered this very carefully and I have not changed my mind about the proper decision in this case. I feel that a liberal construction of the Act under the evidence justifies the position assumed by petitioners and the view expressed by the court in its statement April 25, 1947.

That part of the intervenor's argument which has to do with the practical side of the question I think is answered by the dissenting judge in the Payne case where he said:

> "Nor do we feel that the employers are faced with an impossible task in the adoption of a formula which would not only be workable but thoroughly consonant with the views herein expressed."

And that is borne out by our situation in this case, as stated by Mr. True, attorney for Lockheed.

I would not decide this case at the present time, but would wait for a final decision by the Supreme Court in the Gauweiler case, if it were not for the position of Lockheed. I do not believe it makes any difference how this court decides it because these four New Jersey cases will probably be before the Supreme Court. I am assuming that a writ of certiorari will be requested. I do not believe it really [2] serves the purpose of your company greatly, Mr. True to have a decision now. But you think it does, and you have a right to a decision; so the court is deciding it. Probably there will be a decision by the Supreme Court in the Gauweiler case before the ruling herein can be put into effect, for no doubt there will be an appeal from this court's judgment.

As I said in my opinion before, it seems to the court that the veteran merely steps back upon the same step of the senority escalator on which he was standing when he stepped off to enter the military service.

I believe that is consistent with the holding in the Fishgold case and also with the statement in the Trailmobile case where it said:

> "For the statutory year indeed this meant that the restored rights could not be altered adversely by the usual processes of collective bargaining or of the employer's administration of general business policy * * *."

So judgment is ordered for the petitioners.

There was some question as to the findings.

I do not have the forms here with me that were presented.

Mr. McCall: There was no discussion as to the findings, your Honor. It was in the form of judgment. Mr. Hindin thought that he would prefer to have added to the judgment one paragraph.

Mr. Hindin: I have it here. The judgment as prepared [3] by Mr. McCall simply read, "That respondent Lockheed Aircraft Corporation pay to petitioners the amount of their respective losses of wages as follows:" and then it gives the amounts, "and pay court costs incurred by the United States herein."

In order that the main issue, that is, the respective seniority rights, be properly presented in the record, I suggested a second paragraph to the judgment, which reads:

> "That the provisions of the collective bargaining agreement executed between respondent corporation and intervenor union dated June 4, 1945, and more particularly the seniority provision with reference to union chairman, is inapplicable and not binding upon the petitioners."

In other words, I should not like the record to go up where there may be a question that the only thing decided by the court was whether the petitioners were entitled to the matter of the monetary damages. I think that the real gravamen of the cause of action is whether or not the agreement of June 4th is binding upon the petitioners, and by the inclusion of that one sentence in the judgment the record would thus properly show it.

Mr. McCall: I had no objection to the inclusion of that in the judgment particularly, your Honor, except as I told Mr. Hindin at the time—

The Court: I didn't hear you. [4]

Mr. McCall: I had no objection to the inclusion of that in the judgment because that is what the court did judge or hold, but the same matter had been included in the conclusions of law, which were prepared by me and which the court was to sign, and as I stated to Mr. Hindin my impression of the judgment was simply the final ordering part of what the court did and not the—

The Court: I think strictly speaking you are correct in your view of the office of the judgment.

Mr. McCall: So I told him I didn't care to have it in there, but if your Honor wanted to put it in it was all right with me. I said the repetition of it in the judgment after it has been stated in the conclusions would merely tend to indicate the court might be a little bit proud of its opinion, and I didn't know whether your Honor wanted to include it in that way or not.

The Court: Let's get Mr. True's view of it. What do you think about its inclusion in the judgment?

Mr. True: If it appears in the conclusions of law, I would be inclined to feel that it would then be properly before an appellate court in the event an appeal is taken. And, secondly, when a judgment in money is rendered against this corporation it can only be rendered under these facts upon the theory that the union chairmen provision does not apply to petitioners. [5]

The Court: Do you think it is properly included in the conclusions?

Mr. True: Yes, I feel it is.

The Court: I do not think it makes any difference one way or the other. If it is in the conclusions I think it will serve all purposes that Mr. Hindin would have in mind. There is no question that we like to have our findings, conclusions, and judgment artistically drawn, but it is not so important one way or the other. So I think it may be included.

I don't have the forms of judgment that you presented with me. Or if they are here, I don't know where to find them because my secretary is away. I am going to San Francisco, I have to be there next week, and then I am going back to Los Angeles. I can possibly have them sent up to me before I leave here this week and sign them.

I think the fact stated by Mr. True should be made a part of the record. This case was tried on a statement of facts and unless it is agreed that that be made a part of the record I am afraid that it will not be considered by an appellate court. When we have an agreed statement of facts it is not necessary to have findings. But if you gentlemen would agree that the statement made by Mr. True is correct, and that it be made a part of the statement of facts, or be considered as a part, that will be all that will be necessary.

Mr. Hindin: Specifically, now, what portion of the [6] statement is it that you have asked us to stipulate to? That in the operation of the business of Lockheed they have tried it under several ways?

Mr. True: That in the operation of the business of Lockheed, the defendant corporation has operated, first, under the policy of complying with the contract granting union chairmen top seniority and applying that provision to veterans returning from the service; that, secondly,

Lockheed has operated under the policy of employing and retaining in their employment veterans and not considering that the provision of the contract giving union chairmen top seniority is binding upon those veterans; and that the application of either policy has not proved inconvenient to the company.

The Court: That is the statement that I think should go in as part of the record in view of the opinions in these Third Circuit cases.

Do you have any objection to its going in, Mr. Hindin?

Mr. Hindin: No, I have no objection, but I believe a further statement should go in, in order to present the full picture, and that is that the corporation has not attempted to operate with reference to reinstatement of veterans inducted before the new contract and after the new contract simultaneously and at the same time.

The Court: I do not know whether they have. What is the fact in that case, Mr. True? [7]

Mr. True: The facts in that case are these: During the time we were applying this provision to the veterans we found that almost without exception every veteran who left our employment to go into the armed forces had gone in prior to June 4, 1945, and accordingly we did not draw the distinction which Mr. Hindin makes.

The Court: I think it is proper to have that in, in view of Mr. Hindin's request. I really am of the opinion that it is not a part of this case because of the factual situation, but in view of Mr. Hindin's request I think that also should be made a part of the record.

Are you willing to stipulate that it may be?

Mr. True: I will so stipulate.

The Court: And Mr. McCall?

Mr. McCall: Yes, I will so stipulate.

Mr. Hindin: I will so stipulate.

Mr. McCall: Could it be possible without having that stipulation formally drawn up and signed by us, let it be ordered by the court and the reporter prepare that part of the transcript dealing with the statement made by Mr. True down to the present moment and that that be filed as a part of the stipulation?

Mr. True: Yes.

Mr. Hindin: Yes, that is satisfactory.

The Court: That is satisfactory. [8]

Mr. Hindin: In order that there be no misunderstandings, while I want to stipulate to the facts as presented by Mr. True in his stipulation, I don't want it to be understood that I concede as to the facility of operation or the applicability of that particular matter with reference to the case at issue.

The Court: You are only stipulating to the fact and not that it has any legal bearing. That will be a matter to be determined later.

Very well. I think that concludes our hearing this morning. Court is now recessed.

[Endorsed]: Filed Sep. 9, 1947. Edmund L. Smith, Clerk. [9]

[Endorsed]: No. 11750. United States Circuit Court of Appeals for the Ninth Circuit. Aeronautical Industrial District Lodge 727, an unincorporated association, Appellant, vs. James L. Campbell, Mitchell B. Joplin, Malcolm E. Kirk and Lockheed Aircraft Corporation, a corporation, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed October 3, 1947.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11,750

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Appellant and Intervenor Below,

vs.

JAMES L. CAMPBELL, MITCHELL B. JOPLIN and MALCOLM E. KIRK,

Appellees and Petitioners Below,

LOCKHEED AIRCRAFT CORPORATION, a corporation,

Appellee and Respondent Below.

DESIGNATION OF RECORD AND STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY.

To the Clerk of the U. S. Circuit Court of Appeals and to James L. Campbell, Mitchell B. Joplin and Malcolm E. Kirk, Petitioners and Appellees, and to Messrs. James M. Carter, Ronald Walker and James C. R. McCall, Jr., Attorneys for Petitioners and Appellees, and to Lockheed Aircraft Corporation, Respondent and Appellee, and to Messrs. Robert B. Smith, Robert H. Canan and Mark E. True, Attorneys for Respondent and Appellee:

You and Each of You Will Please Take Notice that Appellant and Intervenor, Aeronautical Industrial Dis-

trict Lodge 727, hereby designates the contents of record on appeal as follows:

* * * * * * * * *

Please take further notice that the points upon which Appellant and Intervenor intends to rely are as follows:

1—That upon the stipulated facts in the above captioned action, the Court erred as a matter of law in the rendition of its judgment against Intervenor and Appellant herein.

2—That the Judgment of the Court is against the law.

Dated: November 10, 1947.

HINDIN, WEISS AND GIRARD
By Maurice J. Hindin
Attorneys for Appellant and Intervenor.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Nov. 12, 1947. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, May 11, 1948.

Before: Mathews, Healy and Orr,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Maurice J. Hindin, counsel for appellant, and by Mr. J. C. R. McCall, Assistant United States Attorney, counsel for appellees, Campbell, et al., and by Mr. Mark E. True, counsel for appellee, Lockheed Aircraft, and submitted to the court for consideration and decision.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, July 26, 1948.

Before: Mathews, Healy and Orr,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith

filed by the clerk, and that a decree be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

In the United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

July 26, 1948

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Before: Mathews, Healy, and Orr,
Circuit Judges.
Healy, Circuit Judge.

OPINION

The individual appellees are re-employed veterans of the armed forces of the United States entitled to the benefits of § 8 of the Selective Training and Service Act of 1940, as amended, 50 App. USCA § 308.[1] At the time of their induction into

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[1] So far as pertinent this statute provides:

"(b) In the case of any such person who, in order to perform such training and service, has left . . . (B) if such position was in the employ of a private employer, such employer shall restore such person, to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so; . . .

(c) Any person who is restored to a position in accordance with the provisions of paragraph . . .

the army they were employees of appellee Lockheed Aircraft Corporation and were members of appellant Aeronautical Union. At that time a collective bargaining agreement was in effect between appellant and Lockheed, governing the conditions of employment and establishing a system of seniority rights for the employees. At all relevant times appellant was the certified collective bargaining agent for Lockheed's employees.

While appellees were in military service, and prior to their restoration to their former positions with Lockheed, the collective bargaining agreement between Lockheed and appellant was changed in such manner as to accord to union chairmen, employed in similar positions, top seniority over all other like employees in the event of lay-offs due to curtailment of work. Prior to this change, and at the time appellees entered the armed forces, the bargaining agreement provided for lay-offs on the basis of straight seniority alone. Within the one year after the restoration of appellees to their former positions each was laid off, due to curtail-

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(B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration."

ment of work, while union chairmen with less seniority than any of them were continued in active employment in their job classifications under the top seniority provisions of the bargaining contract mentioned.

The trial court was of opinion that the change in the seniority system at the plant tended to alter adversely the seniority status of re-employed veterans, and thereby to diminish the re-employment benefits which Congress had secured to them by law, hence the attempted change was, as to re-employed veterans, void and of no effect during their statutory year of re-employment. Judgment was awarded each of appellees in the amount of his loss of wages suffered by reason of his lay-off.

Appellant relies for reversal on a series of opinions by the Third Circuit, namely, Ganweiler vs. Elastic Stop Nut Corp., 162 F. 2d 448; Koury vs. Elastic Stop Nut Corp., 162 F. 2d 544; Di Maggio vs. Elastic Stop Nut Corp., 162 F. 2d 546; and Payne vs. Wright Aeronautical Corp., 162 F. 2d 549, each of which involved identical or very similar factual situations and questions of law. The court arrived at a conclusion contrary to that reached below. In the first three of these cases Judge McLaughlin dissented, and in the fourth Follmer, District Judge, did likewise.

The Supreme Court has not yet ruled directly on the point, although its opinions in Fishgold vs. Sullivan Drydock & Repair Corp., 328 U. S. 275, and Trailmobile Co. vs. Whirls, 331 U. S. 40, are of important aid in the consideration of the problem

and, we think, lend support to the decision below. Later helpful cases bearing on the question, and called to our attention since the oral argument, are Spearmon vs. Thompson, 8 Cir., 167 F. 2d 626; Rudisill vs. Chesapeake & O. Ry. Co., 4 Cir., 167 F. 2d 175; and Dwyer vs. Crosby Co., 2 Cir., 167 F. 2d 567.

It would serve no useful purpose to add to the already extensive war of words on the subject. Enough to say that we disagree with the view expressed by the majority in the Gauweiler and other Third Circuit opinions cited above, and are in agreement with the dissenting opinions. The judgment is accordingly affirmed.

[Endorsed]: Opinion. Filed July 26, 1948. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

No. 11750

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727,

Appellant,

vs.

JAMES L. CAMPBELL, et al.,

Appellees.

DECREE

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court that the judgment of the said District Court in this cause be, and hereby is, affirmed with costs in favor of the appellees and against the appellant.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellees recover against the appellant for their costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and entered July 26, 1948. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

CERTIFICATE OF CLERK, U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and thirty-six (136) pages, numbered from and including 1 to and including 136, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United State Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 2nd day of September, 1918.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 22, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(9930)

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IN THE

Supreme Court of the United States

October Term, 1948.

No. 333

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Petitioner,

vs.

JAMES L. CAMPBELL, MITCHELL B. JOPLIN, MALCOLM E. KIRK and LOCKHEED AIRCRAFT CORPORATION, a corporation.

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit and Brief in Support Thereof.

MAURICE J. HINDIN,
c/o Hindin, Weiss and Girard,
111 West 7th Street, Los Angeles 14, Calif.,
Counsel for Petitioner.

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IN THE

Supreme Court of the United States

October Term, 1948.

No. .....

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Petitioner,

vs.

JAMES L. CAMPBELL, MITCHELL B. JOPLIN, MALCOLM E. KIRK and LOCKHEED AIRCRAFT CORPORATION, a corporation.

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Fred M. Vinson, Chief Justice, and to The Associate Justices of the Supreme Court of the United States:

The petitioner herein, Aeronautical Industrial District Lodge 727, an unincorporated association, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, affirming a decision of the District Court of the United States for the Southern District of California, Central Division.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on July 26, 1948. The Court's opinion is found at page 132 of the transcript. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by Act of February 13, 1925 and Rule 38, Subsection 5B of the Rules of Supreme Court of the United States.

Statutes and Regulations Involved.

The statutes and regulations involved relate to the veterans benefits under Section 8 of the Selective Training and Service Act of 1940 as amended, 50 App. U. S. C. A., Section 308, Subsection 1; Section 403, 1946 Supp. page 58; 54 Stat. 890 (1940); 58 Stat. 799 (1944).

Statement of the Case.

Petitioner, Aeronautical Industrial District Lodge 727 is an unincorporated association and at all times involved in this action was the certified collective bargaining agent of the employees of Lockheed Aircraft Corporation. Respondents herein, Campbell, Joplin and Kirk at the time of their induction into the armed services were employees of respondent, Lockheed Aircraft Corporation and were members in good standing of the petitioner, Aeronautical Industrial District Lodge 727. At the time of their induction into the armed services, a collective bargaining agreement was in effect between the petitioner union and the respondent Lockheed Aircraft Corporation covering

the conditions of employment and establishing a system of seniority rights for employees. [Tr. of Record, p. 11.]

It is not disputed that the terms and conditions of the employment of the individual respondents at the time of their induction into the armed services was covered by this collective bargaining agreement.

While the individual respondents were in military service, the petitioner Union and respondent, Lockheed Aircraft Corporation executed a new collective bargaining agreement. This agreement is referred to as the agreement of June 4, 1945. [Tr. of Record, p. 42.]

The new collective bargaining agreement of June 4, 1945 among other things, made certain changes in the seniority rights of the employees. One of the changes made, and the validity of which change is involved in this case, was that seniority for Union chairmen of various departments of respondent, Lockheed Aircraft Corporation, was established for so long as they remained Union chairmen, over the seniority of other employees irrespective of the length of service in point of time of the employees with the employer company.

After the effective date of the new agreement, to-wit: June 5, 1945, all employees of the respondent, Lockheed Aircraft Corporation then employed by the corporation were bound by the provisions of the collective bargaining agreement. The new collective bargaining agreement superseded the previous agreement.

Upon return from miltary service, individual respondents herein were reemployed. Within the first year after

their reemployment, a general lay-off occurred at the respondent, Lockheed Aircraft Corporation plant due to slackening of work and at that time, Lockheed Aircraft Corporation, in accordance with the terms of the agreement then in effect (the agreement of June 4, 1945), laid off the individual respondents and appellees, but retained the Union chairmen who had been granted top seniority under the new agreement.

The trial court held in favor of the individual respondents herein, holding in effect that said employees were entitled to be restored to their position of seniority as it existed at the time of their induction into the armed services, rather than as it existed at any subsequent time. [Tr. of Record, pp. 111 and 113.] The Circuit Court of Appeals affirmed the lower court's judgment.

Statement of Question Presented.

Where a new collective bargaining agreement is executed between a union (being the certified bargaining agent of all employees) and an employer during an employee's absence on military leave, which new agreement changes certain seniority rights created by a previous agreement, is the veteran, upon his reemployment after his military service, entitled to be restored to his exact seniority status as it existed under the agreement in effect at the date of his induction, or may his status be determined by subsequent agreements executed on behalf of all employees generally after his date of induction?

Opinions of Courts of Last Resort on This Question.

The particular question involved herein has been the subject of five decisions of the United States Courts of Appeals. The Supreme Court of the United States has not yet passed upon this particular question. Four cases have been decided by the Third Circuit Court of Appeals of the United States. These cases are as follows:

Gauweiler v. Elastic Stop Nut Corp., 162 F. 2d 448 (12 Labor Cases p. 71079), decided May 20, 1947;

Koury v. Elastic Stop Nut Corp., 162 F. 2d 544, 12 Labor Cases p. 71101;

DiMaggio v. Elastic Stop Nut Corp., 162 F. 2d 546; 12 Labor Cases p. 71103;

Payne v. Wright Aeronautical Corp., 162 F. 2d 549; 12 Labor Cases p. 71106.

The Ninth Circuit Court in the instant case squarely disagreed with the opinion reached in each of the foregoing cases decided by the Third Circuit Court of Appeals. [Tr. of Record, p. 132.] Both the opinions of the Third Circuit Court of Appeals and the Ninth Circuit Court of Appeals, while arriving at directly conflicting results, find support in the language of two recent cases decided by the Supreme Court of the United States, namely:

Fishgold v. Sullivan Dry Dock and Repair Co., 328 U. S. 275, 66 S. Ct. 1105, 90 L. Ed. 9631, 11 Labor Cases p. 51232;

Trailmobile v. Whirls, 331 U. S. 40.

A direct conflict therefore exists between the Third Circuit Court of Appeals and the Ninth Circuit Court of Appeals on the specific question presented by this Petition.

Reasons Relied Upon for Granting of This Writ.

1—The power of the Supreme Court to grant a Writ of Certiorari is invoked pursuant to Rule 38, Subsection 5B of the Rules of the Supreme Court in that the Ninth Circuit Court of Appeals in the instant case has rendered a decision in conflict with the decision in four cases of the Third Circuit Court of Appeals involving the same subject matter and identical questions of law.

2—The Ninth Circuit Court of Appeals in the instant case has decided an important question of Federal law which has not yet been, but should be settled by the Supreme Court of the United States, and to permit such settlement by the Supreme Court, the Writ should be granted.

3—The conflict in opinions between the Third Circuit Court of Appeals, and the Ninth Circuit Court of Appeals, each stem from an attempt by those courts of last resort to apply the decisions of the Supreme Court on the important question of veterans reemployment rights. Since the Third Circuit Court of Appeals and the Ninth Circuit Court of Appeals, have on an identical set of facts, found support in the language of the opinion of the Supreme Court in the *Fishgold v. Sullivan Dry Dock and Repair Co.* case, 328 U. S. 275, and the *Trailmobile v. Whirls*, 331 U. S. 40 case, while arriving at diametrically

opposed conclusions, final enunciation of the true application of the rules of law enunciated in those decisions should be made by the Supreme Court.

4—The question involved is one of great importance. The Supreme Court has enunciated the importance of fixing and ascertaining the rights of veterans in the leading cases of *Fishgold v. Sullivan Dry Dock and Repair Co.* and *Trailmobile v. Whirls.* Hundreds of collective bargaining contracts with employers affecting the rights of millions of employees throughout the country, have been negotiated since the enactment of Selective Training and Service Act, likewise hundreds of Union contracts executed since 1940 have contained clauses relating to the granting of top seniority to Union chairmen, it being generally recognized as a proper and legitimate form of Union security.

5—The Selective Training and Service Act of 1948 also contains provisions of the reemployment benefits contained in the Selective Training and Service Act of 1940 (Act of June 24, 1948, c. 625, subsections 9, 16, 17, 80th Congress, 2nd session).

A final decision relating to the matter of seniority rights of reemployed veterans directly affect hundreds of thousands of employees and thousands of employers throughout the country and with inductions of men into the armed services currently increasing, the question involved will continue to be of great importance for a considerable time in the future.

Conclusion.

For the foregoing reasons, and for the reasons set forth in the brief in support of this Petition presented herewith, petitioner prays that this Petition be granted, and that the aforesaid question be determind by this Court upon the granting of a Writ of Certiorari herein.

Respectfully submitted,

MAURICE J. HINDIN,
c/o Hindin, Weiss and Girard,
Counsel for Petitioner.

Certificate of Counsel.

I, the undersigned, Maurice J. Hindin, counsel for petitioner herein, hereby certify that in my judgment and opinion the foregoing Petition for a Writ of Certiorari is well founded, and that it is not interposed for purpose of delay.

MAURICE J. HINDIN.

IN THE

Supreme Court of the United States

October Term 1948

No. .....

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Petitioner,

vs.

JAMES L. CAMPBELL, MITCHELL B. JOPLIN, MALCOLM E. KIRK and LOCKHEED AIRCRAFT CORPORATION, a corporation,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

The statements in the Petition for Writ of Certiorari presented herewith with regard to the paragraphs entitled "Jurisdiction," "Statutes and Regulations Involved," "Statement of the Case," "Statement of Question Presented," and "Opinions of Courts of Last Resort on this Question" are incorporated herein by reference thereto.

Summary of Petitioner's Argument.

1—The Supreme Court has heretofore rejected the principle of veteran's super-seniority.

2—The language of the Supreme Court in the *Fishgold* case as well as the language of the statute indicates a basic test to be applied in determining reemployment rights of veterans.

3—The decision of the Ninth Circuit Court of Appeals gives veterans a form of super-seniority not justified under the statute and the *Fishgold* case.

4—The reemployment provisions under the statute do not prevent modification or changes in Union contracts so long as such changes apply generally to all employees and do not discriminate against veterans as such.

ARGUMENT.

I.

The Supreme Court Has Heretofore Rejected the Principal of Veteran's Super-seniority.

The Supreme Court in the case of *Fishgold v. Sullivan Dry Dock and Repair Co.*, 328 U. S. 275, 66 S. Ct. 1105, 90 L. Ed. 963, used the following language:

> "'These guarantees are contained in Section 8 of the Act and extend to a veteran, honorably discharged and still qualified to perform the duties of his old position. (1) He has a stated period of time in which to apply for reemployment. 8(b) He is not pressed for a decision immediately on his discharge but has the opportunity to make plans for the future and readjust himself to civilian life. (2) He must be restored to his former position 'or to a position of like seniority, status, and pay.' 8(b)(A)(B). He is thus protected against receiving a job inferior to that which he had before entering the armed services. (3) He shall be 'restored without loss of seniority' and be considered 'as having been on furlough or leave of absence' during the period of his service for his country, with all of the insurance and other benefits accruing to employees on furlough or leave of absence. 8(c) *Thus he does not step back on the seniority escalator at the point he stepped off. He steps back on at the precise point he would have occupied had he kept his position continuously during the War.* (4) He 'shall not be discharged from such position without cause within one year after such restoration.'" 8(c). (Italics here for emphasis only.)

In defining the rights which the veteran has by way of seniority the Supreme Court used the following language:

> "As we have said, these provisions guarantee the veteran against loss of position or loss of seniority by reason of his absence. He acquires not only the same seniority he had; his service in the armed services is counted as service in the plant so that he does not lose ground by reason of his absence. *But we would distort the language of these provisions if we read it as granting the veteran an increase in seniority over what he would have had if he had never entered the armed services.* We agree with the Circuit Court of Appeals that by these provisions Congress made the restoration as nearly a complete substitute for the original job as was possible. *No step-up or gain in priority can be fairly implied. Congress protected the veteran against loss of ground or demotion on his return. The provisions for restoration without loss of seniority to his old position or to a position of like seniority mean no more.*" (Italics here for emphasis only.)

Likewise the Court indicated that the provisions against the discharge of employees are relative only. The Court in that connection declared as follows:

> "Congress recognized in the Act the existence of seniority systems and seniority rights. It sought to preserve the veteran's rights under those systems and to protect him against loss under them by reason of his absence. There is indeed no suggestion that

Congress sought to sweep aside the seniority system. What it undertook to do was to give the veteran protection within the framework of the seniority system plus a guarantee against demotion or termination of the employment relationship without cause for a year."

The test therefore, as laid down by the Supreme Court in the *Fishgold* case appears to be in substance, that a veteran is entitled to the same job and the same incidents therewith, as he would have enjoyed had he continued in the job as an employee doing the same kind of work throughout the time he was absent for military duty. In other words, he would be entitled to the same rights as he would have enjoyed had he remained on the job, and the Court definitely refused to accept the proposition that the veteran is entitled to any greater rights. In other words, it denied the veteran any greater seniority than he would have had he remained on the job. The test as applied to this case therefore, resolves itself to an examination of the rights of the individual respondents had they been on the job throughout the entire period that they were in military service.

II.

The Language of the Supreme Court in the Fishgold Case as Well as the Language of the Statute Indicates the Sound Rule to Be Applied in Determining Reemployment Rights of Veterans and Should Have Been Applied by the Circuit Court in This Case.

The Third Circuit Court of Appeals in the cases of *Gauweiler v. Elastic Stop Nut Corp.*, 162 F. 2d 448, and *Koury v. Elastic Stop Nut Corp.*, 162 F. 2d 544, and *DiMaggio v. Elastic Stop Nut Corp.*, 162 F. 2d 546 and *Payne v. Wright Aeronautical Corp.*, 162 F. 2d 549 applied what petitioner feels is the correct application of the rules of constructon enunciated by the Supreme Court in the *Fishgold* case. The Ninth Circuit Court of Appeals in the instant case arrived at a contrary result on facts substantially identical to those in the Third Circuit Court cases.

III.

The Decision of the Ninth Circuit Court of Appeals in This Case Gives Veterans a Form of Superseniority Not Justified Under the Statute Nor Under the Doctrine of the Fishgold Case.

A. All Seniority Rights Are Based on Contractual Rights Only, or on Seniority Rights Established by Law.

Employment in and of itself does not carry with it any inherent right to seniority. Seniority rights exist only by virtue of a contractual agreement or by statutory enactments. Without a collective bargaining agreement, or other contract creating employee seniority rights, an employee has no inherent right to seniority.

Elder v. New York Central Railway, 152 F. 2d 361.

In the instant case, the only rights of the individual respondents to seniority rights are based on the collective bargaining agreements executed between the petitioner and respondent, Lockheed Aircraft Corporation, and but for these collective bargaining agreements there would be no right of seniority in the individual respondents. The selective service law did not propose to create seniority rights where none previously existed by contract.

B. Employees' Rights to Seniority May Be Increased or Decreased or Changed From Time to Time by the Process of Collective Bargaining.

A Union certified for collective bargaining is the duly qualified and regular agent to represent its members and all other employees within its bargaining group and to bargain for them and to make valid contracts for them and on their behalf, and the employees are bound by the terms of such contracts.

McQuay Norris v. N. L. R. B., 116 F. 2d 748;
N. L. R. B. v. John Englehorn & Sons, 134 F. 2d 553.

The employer is likewise bound to deal with the authorized collective bargaining agent.

Pueblo Gas and Fuel Co. v. N. L. R. B., 118 F. 2d 304.

In the instant case there is no question that the petitioner was the authorized bargaining agent for its employees and for the individual respondents as members of the Union, and there is no question but that all of the employees within the bargaining unit were bound by the terms of the respective agreements.

Likewise it is not disputed that had the individual respondents been continuously employed at the respondent, Lockheed Aircraft Corporation plants on and after June 5th, 1945, rather than having been in service with the military forces, they would have been bound in all respects by the seniority provisions of the second Collective Bargaining Agreement which became effective June 5, 1945.

C. The Individual Respondents Are Not Entitled to Any Greater Seniority by Reason of Their Military Service Than They Would Have Been Entitled Had They Been Continuously Employed on the Job During the Period That They Served in Military Service.

If the true test of veterans reemployment rights is that the veteran is entitled to no greater nor lesser seniority rights than he would have enjoyed had he remained continuously at work and on the job or if he were considered as having been on furlough or leave of absence, it becomes obvious that the legal effect of the decision of the Ninth Circuit Court is to grant him a form of super-seniority over employees who were on the job continuously and also over veterans who were inducted after June 5, 1945. This is true for the reason that had the veteran remained at work instead of being in military service, or had he been actually on leave of absence or on furlough, then he would have been bound by all of the terms and conditions of the new collective bargaining agreement executed between his employer and the Union as certified bargaining agent. To permit him to return to work under conditions identical to those existing at the date of his induction, gives him a privilege and a form of super-seniority not enjoyed by his fellow employees who remained at home on the job, or who might have been on furlough or on leave of absence, nor enjoyed by veterans inducted after June 5, 1945. It is believed that this result was not intended by the Act and this position is recognized by the opinions of the Third Circuit Court. (See prior reference to the *Fishgold v. Sullivan Dry Dock and Repair Co.* case and the cases of *Gauweiler v. Elastic Stop Nut Corp., Koury v. Elastic Stop Nut Corp., DiMaggio v. Elastic Stop Nut Corp.*, and *Payne v. Wright Aernautical Corp.*)

IV.

The Reemployment Provisions Under the Statute Do Not Prevent Modification or Changes in Union Contracts so Long as Such Changes Apply Generally to All Employees and Do Not Discriminate Against Veterans as Such.

There is no question that the petitioner and the respondent, Lockheed Aircraft Corporation had the right to make modifications or changes in existing contracts, nor is there any question that the agreement of June 5, 1945, was in all respects valid and binding with reference to all employees then at work. The Circuit Court in the *Gauweiler* case, and the other cases above cited, recognizes the rule that the rights of all employees to seniority, status, and pay are determined by and dependent upon the applicable provisions of collective bargaining agreements in effect between the union and employer. The Court in the *Gauweiler* case and in the other cases decided by the Third Circuit on the same day, recognized the validity of such contracts and also recognized the applicability of the provisions of such contracts to employees on military leave. The only limitation noted by the Court was that the contract not contain discriminatory provisions against veterans. In the instant case, the contract of June 5, 1945, was applicable to all employees whether veterans or not.

The *Gauweiler* case also recognized legitimate reasons for collective bargaining agreements to provide for seniority for union officials. It would appear therefore that since the individual respondents would have been bound by all of the terms of the agreement of June 5, 1945, had they been at work at the employer's plant on and after June 5, 1945, or if they had been inducted into the armed

services after June 5, 1945, it would follow that they should be bound by the terms of the new agreement, even though they were in military service at the time of the execution of the new agreement.

The reasonableness of the petitioner's position is seen when it is considered that the individual respondents during the entire period of their reemployment received, enjoyed and accepted without complaint all of the benefits secured for them by the new collective bargaining agreement. Only when they were confronted with a single provision of the new agreement which did not please them did they demand to be restored to some of the rights they had under the old agreement, and this to the detriment of all of their fellow workers who stayed on the job, and fellow veterans who were inducted after the date of the new contract.

Conclusion.

It is therefore respectfully submitted that this Petition for Writ of Certiorari be granted and that the Court settle with finality by its judgment the conflict in the law which now exists.

Respectfully submitted,

MAURICE J. HINDIN,

c/o Hindin, Weiss and Girard,

Counsel for Petitioner.

Los Angeles, California, September 28, 1948.

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No. 333

In the Supreme Court of the United States

OCTOBER TERM, 1948

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

JAMES L. CAMPBELL, MITCHELL B. JOPLIN, MALCOLM E. KIRK, AND LOCKHEED AIRCRAFT CORPORATION, A CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS JAMES L. CAMPBELL, MITCHELL B. JOPLIN, AND MALCOLM E. KIRK

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 333

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OPINIONS BELOW

The oral opinion of the District Court (R. 118–119) is not officially reported. The opinion of the United States Court of Appeals for the Ninth Circuit (R. 132) is reported at 169 F. 2d 252.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on July 26, 1948 (R. 136). The petition for a writ

of certiorari was filed on October 1, 1948. The jurisdiction of this Court rests upon 28 U. S. C. 1254.

QUESTION PRESENTED

Whether Section 8 (c) of the Selective Training and Service Act of 1940 protects a restored veteran during the first year of his employment against lay-off before union officers with shorter periods of service but who were accorded "top" seniority pursuant to a modification of the collective bargaining agreement after the veteran had entered military service, where both the original and modified seniority provisions were negotiated by a union of which the veteran was a member.

STATUTE INVOLVED

Section 8 (c) of the Selective Training and Service Act of 1940 (54 Stat. 885; 50 U. S. C. App. 308 (c)) provides as follows:

> (c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time

such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration."

STATEMENT

Respondent employees brought this suit under Section 8 (c) of the Selective Training and Service Act to recover compensation for loss of wages for a period during which they were laid off in alleged violation of their reemployment rights as honorably discharged veterans (R. 2–11). At the time of the induction into military service of the three employees involved, a collective bargaining agreement was in effect between Lockheed Aircraft Corporation, their employer, and petitioner, their collective bargaining agent, which provided for lay-offs based upon seniority and other factors not relevant here (R. 100, 102). During their absence, a new collective agreement was executed which modified the seniority provisions by giving union chairmen top seniority regardless of length of service (R. 103, 105).

Subsequent to the execution of this agreement, the employees were honorably discharged from military service and were restored to their jobs (R. 98–100, 103). They had remained members of the union throughout this period (R. 97–98). Thereafter, but within one year after they had been restored to their former positions, they were laid off pursuant to the terms of the new collective bargaining agreement, while union

chairmen with shorter periods of service were retained in their jobs (R. 106). They protested this action and were restored to active employment within a month (R. 106–107). An action was then brought for the compensation lost during the lay-off period (R. 2). Both the District Court and the Court of Appeals held that Section 8 (c) of the Selective Training and Service Act of 1940 prevented any adverse modification of the seniority rights of reemployed veterans during the first year of reemployment, and awarded compensation to the respondent employees for the time lost (R. 113–114, 134–135).

DISCUSSION

This Court has passed upon the restored veteran's rights under an unmodified seniority system during the first year of his reemployment (*Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U. S. 275), and his rights after the first year when seniority rights have been changed by a collective bargaining agreement. *Trailmobile Co.* v. *Whirls*, 331 U. S. 40. The question of the restored veteran's rights during the first year of his reemployment, when a collective bargaining agreement has modified the seniority system in effect at the time he entered military service, has not been decided by this Court.

Although both courts found support for their conclusions in the language in the *Fishgold* and *Whirls* opinions, the decision of the court be-

low is diametrically contrary to the result reached by the Court of Appeals for the Third Circuit in *Gauweiler* v. *Elastic Stop Nut Corporation*, 162 F. 2d 448, on virtually identical facts. See also the decisions of the same court in *Koury* v. *Elastic Stop Nut Corp.*, 162 F. 2d 544; *DiMaggio* v. *Elastic Stop Nut Corp.*, 162 F. 2d 546; *Payne* v. *Wright Aeronautical Corp.*, 162 F. 2d 549. The court below held that the provision for top seniority to union chairmen was an invalid attempt to diminish the reemployment rights guaranteed restored veterans (R. 134). The Court of Appeals for the Third Circuit, however, upheld higher seniority for a union official on the ground that even during the first year of his reemployment "the employee absent in war service is bound by the non-discriminatory arrangements made between the bargaining unit and the employer during his absence." 162 F. 2d at 451.

The type of provision in question is one commonly found in collective bargaining agreements, and may affect the rights of many restored veterans to money judgments or continued employment. The precise issue of this case will also arise under the Selective Service Act of 1948, where it is at least possible that it would be governed by the Court's disposition of this case—despite some differences in the phrasing of the 1940 and 1948 Acts. In any event, we do not oppose the granting

of the petition for a writ of certiorari because of the square conflict in the circuits.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

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No. 333

In the Supreme Court of the United States

OCTOBER TERM, 1948

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, AN UNINCORPORATED ASSOCIATION, PETITIONER

v.

JAMES L. CAMPBELL, MITCHELL B. JOPLIN, MALCOLM E. KIRK, AND LOCKHEED AIRCRAFT CORPORATION, A CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE RESPONDENTS JAMES L. CAMPBELL, MITCHELL B. JOPLIN, AND MALCOLM E. KIRK

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BRIEF FOR THE RESPONDENTS JAMES L. CAMPBELL, MITCHELL B. JOPLIN, AND MALCOLM E. KIRK

OPINIONS BELOW

The oral opinion of the District Court for the Southern District of California (R. 117-120) is not officially reported. The opinion of the United States Court of Appeals for the Ninth Circuit (R. 132) is reported at 169 F. 2d 252.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on July

26, 1948 (R. 136). The petition for a writ of certiorari was filed on October 1, 1948, and was granted on November 22, 1948 (R. 138). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a collective bargaining agreement, entered into during a World War II veteran's absence in military service, may reduce the seniority ranking which he held at the time of his induction by conferring absolute retention rights on union officials with lesser seniority, where, as a result of such reduced seniority ranking, he is laid off from work during the first year of his reemployment and union officials with less seniority are retained.

STATUTE INVOLVED

The pertinent provisions of the Selective Training and Service Act of 1940, as amended, are set out in the Appendix, pp. 47-49.

STATEMENT

Respondent Campbell entered the employ of respondent Lockheed Aircraft Corporation (Lockheed) on August 17, 1942, was inducted into the Army of the United States on February 26, 1944, and, after being honorably discharged on October 28, 1945, was reemployed by Lockheed on November 27, 1945 (R. 9-10, 98). Respondent Joplin was employed by Lockheed on April 19, 1943, entered the Army on June 4, 1945, was honorably discharged on November 23, 1945, and was reem-

ployed on December 10, 1945 (R. 10, 99). Respondent Kirk was employed by Lockheed on August 5, 1942, was inducted into the Army on June 2, 1944, was honorably discharged on January 12, 1946, and was reemployed on March 7, 1946 (R. 10, 99-100).

At the time of the induction of each of the three into military service, a collective bargaining agreement was in effect between Lockheed, their employer, and petitioner, Aeronautical Industrial District Lodge 727 (the Union), their collective bargaining agent (R. 4, 100). The seniority provisions of that agreement, which had been in effect since September 15, 1941, provided for layoffs based on length of service in the plant (R. 4, 23).[1] The 1941 agreement also provided for a "department chairman for approximately every 35 to 50 employees and a senior chairman for each department" for each shift of work (R. 19). The 1941

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[1] Art. III, sec. 5 of the 1941 agreement provided (R. 23-24): "In case of a slack in production, layoffs are to be made primarily on the basis of the principle of seniority. Due consideration will be given, however, to (a) knowledge, training, ability, skill and efficiency, and (b) deportment record and other factors. If it becomes necessary to reduce the working force in any plant or department, a plan of layoff procedure will be prepared by the management and submitted to the Union for approval. If such plan is not acceptable to the Union the Company agrees to enter negotiations with the Union and to attempt to arrive at a mutually agreeable plan. If, however, at the end of one working week from the date the Company submitted its original plan of layoff procedure to the Union no new plan has been mutually agreed to, the Company may proceed according to its proposed plan of layoff subject to Article II, Section 6."

agreement contained no provision for preference in retention of union chairmen in the event of layoffs.

On June 4, 1945, while the three respondent employees were in military service, a new collective bargaining agreement was made. (R. 5, 103). Under this new agreement, the seniority provisions of the 1941 agreement were changed so as to give union chairmen super-seniority regardless of length of service in the plant (R. 61, 105).[2] Apart from this modification, the sequence of layoffs necessitated by reductions in force was not altered (Art. IV, sec. 3(A) and (B), R. 60, 104).

The 1945 agreement was in effect at the time the three respondent employees were reemployed by Lockheed. They were and had been members of the union (R. 97-98). Thereafter, but within one year of their reemployment, they were laid off

[2] Art. IV, sec. 3(D), of the 1945 agreement provided (R. 61): "Top seniority for union chairmen for purpose of layoffs. For the purpose of applying the temporary and general layoff procedures, union chairmen who have acquired seniority shall be deemed to have top seniority so long as they remain chairmen. If the application of the general layoff procedure will result in the retention of more of such chairmen in a group or department than are provided for in Article II, Section 2 of this agreement, the Company shall prepare and furnish to the Union a list of all chairmen in the locations where the surplus exists. The Union shall upon request of the Company promptly designate the chairmen who are to remain in that capacity and the chairmen not to be retained as chairmen shall be governed by the seniority rules applicable to the layoff of other employees. During a temporary layoff and during the period between the first and second steps in an emergency reduction of the working force, the terms of office of laid-off union chairmen shall be deemed to continue."

pursuant to the terms of the new collective bargaining agreement while union chairmen in the same occupation group and with shorter periods of service with Lockheed were retained in their jobs (R. 90, 93). The stipulation of facts refers to but a single union chairman as having been retained in preference to the respondent employees (R. 106). However, the answers of both Lockheed and the Union admit that Lockheed retained in its active employ "certain Union chairmen with less seniority, i. e., 'length of service with the Company,' than 'petitioners'" (R. 89, 93). The ability, skill and efficiency of the respondent employees, during the period of their layoff, was "substantially equal" to that of the union chairmen who were retained (R. 90, 93). The three respondent employees protested their layoff and were restored to active employment within a month (R. 107). Had they not been laid off they would have received as pay from Lockheed for the period of their layoff, the following sums: Campbell, $168.00; Joplin, $124.56; and Kirk, $190.00 (R. 107).

Respondent employees brought suit, in the District Court on November 27, 1946, against Lockheed (R. 2, 88).[3] Their "Petition for Enforcement of Veterans' Reemployment Rights" prayed for judgment for the compensation lost during the lay-

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[3] Respondents were represented by the United States Attorney under Section 8(c) of the Selective Training and Service Act of 1940.

off period as a result of "respondent's unlawful action in failing and refusing to reemploy them without loss of seniority, and in laying them off while retaining in active employment group and senior chairmen with less company-wide seniority * * *" (R. 2, 10). Lockheed answered admitting the layoffs and the retention of union chairmen with lesser seniority in accordance with the 1945 agreement, but prayed for a judgment in its behalf (R. 89, 90-91). Petitioner Union was permitted to intervene. It filed an answer, admitting the layoffs, the retention in the same occupation group in which the veterans were employed of union chairmen with lesser seniority, and the fact that the ability, skill and efficiency of each of the three veterans was substantially equal to that of any of the retained union chairmen (R. 93). The union's answer, in addition, alleged as a separate defense that respondent employees were members of the union and bound by the provisions of the 1945 agreement, and prayed for a denial of the relief sought in the petition (R. 95-96).

The District Court tried the cause on the pleadings and a stipulation of facts. The court adopted the stipulation as its own findings of fact (R. 97-107, 111). It decided that the three employees were entitled to the wages they lost during their layoff and that the provision of the 1945 collective bargaining agreement giving top seniority to union chairmen was inapplicable to, and not binding upon,

the three employees "during their statutory year of reemployment" (R. 111-112). In an oral opinion, the District Court pointed out that its decision in favor of the veteran employees did not confer on them a "step-up or gain in priority * * * [they] merely step back upon the same step of the seniority escalator * * * [from which they] stepped off to enter the military service. The union chairman either was on a lower step or took his position on the escalator while the veteran was absent. No agreement between employer and union made in the veteran's absence could give the chairman a place above him in seniority." (R. 119-120).

The Court of Appeals for the Ninth Circuit affirmed on the basis of *Fishgold* v. *Sullivan Corp.*, 328 U. S. 275, and *Trailmobile Co.* v. *Whirls*, 331 U. S. 40. The court also expressed its agreement with the dissenting, rather than majority opinions, in four Third Circuit cases involving the same issue; *Gauweiler* v. *Elastic Stop Nut Corp.*, 162 F. 2d 448; *Koury* v. *Elastic Stop Nut Corp.*, 162 F. 2d 544; *DiMaggio* v. *Elastic Stop Nut Corp.*, 162 F. 2d 546; and *Payne* v. *Wright Aeronautical Corp.*, 162 F. 2d 549. Judgment of affirmance was entered on July 26, 1948 (R. 136).

SUMMARY OF ARGUMENT

Respondent veterans, during the first year of their reemployment, were laid off from work pursuant to the provisions of a collective bargaining agreement entered into during the period of their

service in the armed forces. That agreement changed the preexisting one by granting super-seniority to certain union officials, who had less seniority under the preexisting agreement than respondent veterans. The basic right here asserted by respondent veterans is that of restoration to employment for one year at their pre-induction jobs with at least the same seniority they had before their induction. This right is not predicated on any claim of "super-seniority" over non-veterans during layoffs. It rests on the veteran's right under the Selective Service and Training Act of 1940 to his pre-service seniority and to a full year's reemployment in accordance with that seniority. That Act was an expression of congressional desire that a returning veteran be assured of a full year's reemployment in which to rehabilitate himself economically, a purpose fully recognized by this Court. Section 8 of the Act extended that protection to veterans returning to both private and federal employ. The right may be limited, in private employment, by the normal operation of the seniority system in effect at the time of the veteran's induction. It may not, however, as the court below properly held, be impaired by seniority systems established by an employer and a union during the veteran's absence in military service.

I. A. The legislative history of the Act discloses that this view accords with the congressional intent. Congressional consideration of the per-

tinent bills in committee and on the floor shows a special and consistent intent to restore the veteran to his full pre-service seniority.

B. The language of the Act fully reflects the congressional intent. Section 8(b) requires that the veteran be "restore [*d*]" to his pre-service position "or to a position of like seniority, status, and pay." Section 8(c) repeats the congressional mandate that the veteran "shall be restored without loss of seniority," and prohibits his discharge "without cause within one year after such restoration." If Congress had intended the result here urged by petitioner (*i.e.*, restoration to whatever seniority is available under the collective bargaining agreement in effect at the time of the veteran's reemployment), it would not have required restoration "without loss of seniority."

C. This Court's rulings in *Fishgold* v. *Sullivan Corp.*, 328 U. S. 275, and *Trailmobile Co.* v. *Whirls*, 331 U. S. 40, fully support this position. Those cases hold that Section 8 secures to a veteran his full pre-service seniority rank during his first reemployment year. They also hold that an impairment of a veteran's pre-service seniority standing during that first year constitutes a demotion to an inferior position and consequently a "discharge" in violation of Section 8(c). Where, as here, the 1945 agreement not only "demoted" veterans by reducing their numerical ranking on the seniority

roster, but also forced them out of work with a resulting loss of wages, even greater reason exists for invoking the protection afforded veterans by Section 8.

II. A. The veteran's right to pre-service seniority is protected by statute. It may not, therefore, be impaired by a later collective bargaining agreement between an employer and a union. It is immaterial that the pre-service seniority here involved was acquired under a collective bargaining agreement. In the absence of such an agreement and the general seniority system created under it, the veteran, in private industry, has the same absolute right to the full year's employment as is available to veterans restored to federal employ. In addition, there can be no doubt that Section 8 requires a restoration to at least the seniority accrued prior to the veteran's military service. Since the 1945 agreement here involved conflicts with statutory protection granted by Section 8, the agreement obviously must yield.

B. Contrary to petitioner's contention, Section 8 does more than prevent discrimination against the returing veteran because of his military service. Section 8, in many of its clauses, extends to reemployed veterans protection which they would not have had if they had remained at work. The legislative history of the reemployment provisions also shows that reading Section 8 to embody only a rule

against discrimination writes into it provisions which Congress specifically rejected. Moreover, the *Fishgold* and *Trailmobile* cases fully recognize that the purpose of Section 8 is not to be limited to preventing discrimination against the veteran.

Nor is there substance to the fear that failure to enforce the union chairmen super-seniority provision against veterans with greater seniority may disrupt harmonious labor relations. The merits of the system of "top" seniority for union officials are not in issue here. There would seem to be no reason why labor and management could not make such a system fully effective except in the very limited zone where it would cut down the protection given by Section 8 to the veteran during his first reemployment year.

ARGUMENT

The three respondent veterans, after completing their Army service, were restored by Lockheed to their positions as mechanics. Due to a subsequent lack of work in the plant, each of these veterans was laid off for about a month during their first year of reemployment, even though other mechanics who had shorter service with the plant but who held union chairmanships, were not laid off. These layoffs were effected in accordance with a 1945 collective bargaining agreement, entered into between Lockheed and the petitioner while the veterans were in the Army. That agreement required Lockheed to lay off senior employees before

junior employees holding union chairmanships. This requirement differed from the seniority provision in effect at the time of induction of respondent veterans into the Army. At that time, the collective bargaining agreement required that junior employees be laid off before senior employees and conferred no superior retention rights on union chairmen.

The application of the layoff provisions of the 1945 agreement to respondent veterans which resulted in Lockheed's refusal to give them work for a month during the statutory reemployment year, constituted a clear violation of the Selective Training and Service Act of 1940. The right of the veteran to continued employment during the slack period in this case is based not on any claim of "superseniority" over non-veterans during layoffs, but on the Act's preservation of his preservice seniority and its provision, in private industry, for a full year's reemployment in accordance with such seniority.

Congress, in September, 1940, enacted the Selective Training and Service Act to make possible the expansion of the Army and Navy and the training of the manpower of the nation to wage a winning war in the event that the United States should become involved in the war which had already commenced. It recognized that the employment status of men called upon to serve in the armed forces would be disrupted and that, after

the completion of the training period, many might have no civilian jobs to which to return. Section 8 of the Act was designed to lessen the subsequent economic impact upon the men thus inducted into the military service. It required the employer to rehire the returning veteran and gave the veteran the opportunity for economic rehabilitation by assuring him one year's employment from the time of restoration to his position (Section 8(b) and (c)). See *John S. Doane Co. v. Martin*, 164 F. 2d 537, 540 (C. A. 1). After the United States became involved in World War II, the Act applied in terms to all persons who were inducted into the armed services. Where the veteran had no job to return to, and it was impossible to assure him of a year's employment in which to regain his lost skills and reestablish himself accordingly, Congress, in later legislation, provided for unemployment compensation payments for the same one year period.[4]

Congressional concern for the veteran's right to his job for one year in those cases where he had a job to which to return, is fully recognized in the three decisions of this Court involving the reemployment provision of Section 8. *Hilton v. Sullivan*, 334 U. S. 323, held that Section 8 guarantees to a returning federal employee absolute retention preference during his first year of reemployment.

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[4] Serviceman's Readjustment Act of 1944, 58 Stat. 295; 38 U. S. C. 696(a).

Trailmobile Co. v. *Whirls*, 331 U. S. 40, recognized that the statutory reemployment right is effective against a private employer through, but not beyond, the first year of reemployment. And *Fishgold* v. *Sullivan Corp.*, 328 U. S. 275, held that while a veteran returning to private employ is entitled to a full year of reemployment, he may, pursuant to seniority provisions in a collective bargaining agreement in force at the time of his induction into the armed forces, be laid off during that first year. Thus, both in federal and private employment a veteran has an absolute right to a full year's employment, except where a pre-existing contract set up a seniority system the operation of which called for the retention of a non-veteran with greater seniority in the event of layoff. In the absence of such a pre-induction seniority system, there would seem to be no doubt of the veteran's right, in private employment, to the absolute retention preference for one year which this Court held to exist in favor of federal employees. See *Hilton* v. *Sullivan*, 334 U. S. 323, 332.

Section 8, then, provides for a year's actual employment for a veteran who returns to federal employment or to private employment. In private employment, however, that right is subject to seniority provisions in collective bargaining agreements effective at the time of the veteran's induc-

tion.[3] Here, operation of the seniority system in effect at the time of the veterans' inductions would have precluded their layoffs during their first year of reemployment. The chief issue in this case is whether Section 8's provision for a year's reemployment in private industry may be impaired by seniority provisions of a collective bargaining agreement entered into during the veteran's absence in military service. Petitioner urges that the veterans' reemployment rights can be so impaired even though his normal pre-service seniority entitles him to full employment for that year. We submit, on the contrary, that the Act protects the veteran's pre-service seniority and that such seniority may not be impaired within the year of assured reemployment by a subsequent collective bargaining agreement.

I

Section 8 of the Selective Training and Service Act of 1940 Guarantees the Veteran at Least His Pre-service Seniority During the First Year of His Reemployment

The legislative history of the Selective Training and Service Act of 1940, the plain language of Section 8 thereof, and the decisions of this Court interpreting the Act disclose that Congress provided that a veteran was to be restored to the position

[3] It is also subject to the further condition that reemployment by a private employer shall not be required where "the employer's circumstances have so changed as to make [such reemployment] impossible or unreasonable." That proviso, however, has no application to the instant case.

which he held at the time of his induction and that he was to be protected in that position against discharge, demotion or reduction in seniority for at least one year.

A. *The Legislative History*

The legislative history of Section 8 of the Selective Training and Service Act of 1940 discloses an abiding congressional intent to protect fully the veteran's pre-service seniority. In tracing the development of Section 8 of the Selective Training and Service Act, the legislative history of the National Guard Act is also pertinent, since both were simultaneously under consideration, and because it was deemed desirable to keep their reemployment provisions identical. Changes made in one were incorporated into the other without further debate.

As originally introduced in the 3d Session of the 76th Congress, neither S. J. Res. 286, which eventually became the National Guard Act, nor S. 4164 and H. R. 10132, which became the Selective Training and Service Act of 1940, contained any provisions for reemployment of returning veterans. Such provisions were first inserted by the Senate Committee on Military Affairs in its consideration of S. 4164, the first of the two measures to be proposed, and it is the successive Committee prints of S. 4164 which reveal the

solicitude of the legislators to safeguard a veteran's pre-service seniority.[6]

Thus, the first draft of the bill prepared by the Senate Military Affairs Committee declared it to be "the purpose and intent of the Congress that every man who is called from a job when inducted * * * ought to be reemployed in such job or an equally good one *without loss of seniority* * * *." Committee Print No. 1, July 23, 1940. (Emphasis supplied.) The absolute protection of pre-service seniority was again emphasized in the fourth committee draft of the reemployment provisions of the Act, which declared that it was "the purpose and intent of the Congress that every man who is called from a job * * * with a private employer * * * be reemployed in such job or a comparable one *without loss of seniority* or benefits or insurance participation and benefits * * *." Committee Print No. 4, July 27, 1940. (Emphasis supplied.) In the fifth committee draft, the first pertinent sentence of the reemployment provisions simply ordered the returning veteran restored to his former position "or to a position of like status and pay" (Section 8(b)). In order to spell out clearly the fact that the "like status" restoration requirement necessitated restoration to a position which guaranteed pre-service seniority rank, an

[6] Since "seniority is an extremely valuable right * * * it is easily understandable that Congress should be alert to safeguard veterans in this particular." *Huffman* v. *Norfolk & Western Ry. Co.*, 71 F. Supp. 564, 568 (W. D. Va.).

additional sentence was added to this fifth print. It provided that the veteran "shall be so restored without loss of seniority, insurance participation or benefits, or other benefits, and such person shall not be discharged from such position without cause within one year after such restoration." (Section 8(c)). Committee Print No. 5, July 31, 1940.

While these reemployment provisions were developing during the Senate Military Affairs Committee's consideration of S. 4164, they were first debated in Congress in connection with S. J. Res. 286 which, although introduced much later than S. 4164, was reported earlier. S. J. Res. 286 was introduced and reported on July 30, 1940 (86 Cong. Rec. 9684), with the addition of the reemployment provisions formulated by the Committee in connection with S. 4164. See S. Rep. No. 1987, 76th Cong., 3d sess. Here, too, since the first restoration provision referred only to "a position of like status and pay," an additional sentence was added to emphasize the intent to have "like status" include a specific guarantee against loss of pre-service seniority.[7]

The Senate passed the National Guard bill with-

[7] The additional sentence, which is identical with Section 8(c) originally enacted into the National Guard Act read as follows (54 Stat. 858, 860):

> Any person who is restored to a position in accordance with the provisions of paragraphs (A) or (B) of subsection (b) shall be so restored without loss of seniority, insurance participation or benefits, or other benefits, and such person shall not be discharged from such position without cause within one year after such restoration.

out any change in the Committee-recommended reinstatement provisions. 86 Cong. Rec. 10068. The House Committee on Military Affairs recommended the elimination of the additional sentence. However, since that elimination could have possibly raised a doubt as to whether "like status" included seniority, the House Committee carefully inserted the word "seniority" in the first sentence of the restoration provision. (H. Rep. No. 2847, 76th Cong., 3d sess.). The House accepted both amendments without debate. 86 Cong. Rec. 10439, 10448. In conference, the provision protecting seniority was still further strengthened. Not only did the conference committee restore the additional sentence specifically requiring restoration "without loss of seniority," but, in addition, adopted the House's insertion of "seniority" in the first sentence. (H. Rep. No. 2874, 76th Cong., 3d sess.). The chairman of the House Military Affairs Committee, in discussing the conference report, explained the additional references to seniority as follows (86 Cong. Rec. 10761):

> * * * You will find that in amendments number 12, 13, and 14 the House inserted the word "seniority" relating to a position held by the guardsman. It is inserted in three places, and provides that he shall be restored to his seniority status. In other words, if a man is a Civil Service employee in the Government of the United States and is called into service, he shall be restored on his return to the senior

> position he held before he left without losing that seniority position. Likewise, with a railroad employee, under a system of seniority rights on the railroad that gives the older men in the service priority over the others, that man when he returns shall be restored to his seniority position.

S. J. Res. 286 was passed by both Houses with these changes. 86 Cong. Rec. 10759-10763, 10791; National Guard Act, Joint Resolution of August 27, 1940, c. 689, 54 Stat. 858.

These repeated references to pre-service seniority restoration were not necessary to preserve that seniority. A single provision to that effect would have sufficed. Nevertheless, Congress deliberately utilized these references to seniority to dispel the very doubt which petitioner here seeks to engender.

Both reemployment provisions, with the deliberately repeated reference to seniority, were then carried over into the selective service bill (86 Cong. Rec. 10922-10923). The second sentence (which became Section 8(c) of the Act) was amended, as indicated by the italicized portion below, to clarify the fact that the benefits available to the returning veteran were to be no less than those he enjoyed at the time of his induction into the service. 86 Cong. Rec. 10914, 11702. It was changed to read as follows:

> Any person who is restored * * * shall be so restored without loss of seniority; *and shall*

be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time of being inducted into such forces, and shall not be discharged from such position without cause within 1 year after such restoration.[8]

In explaining this amendment, the chairman of the House Military Affairs Committee stated its chief purpose to be (86 Cong. Rec. 11702):

> * * * to preserve the seniority rights of the thousands and hundreds of thousands of railroad employees and other employees of that character who have certain seniority privileges on the railroads. In other words, we put them on furlough during the time they are in the service and they will even be permitted to count this time on the question of their retirement.

Throughout the congressional consideration of both the National Guard and the selective service bills, the right of restoration to a job without loss

[8] This language was also added to the appropriate section of the National Guard Act, previously passed, so as to conform the two statutes. See Section 8(d) of the original Selective Training and Service Act, 54 Stat. at 891, amending Section 3(c) of the National Guard Act. The only difference then remaining reflected the different character of the military service involved. Section 8(c) of the Selective Training and Service Act referred to "the time such person was inducted into such forces," while Section 3(c) of the National Guard Act as amended spoke of "the time such person was ordered into such service."

of pre-service seniority; especially where such a loss would prejudice the veteran's rights to a full year's reemployment, was consistently recognized as an essential element of the reemployment provisions. The committee clarification of "status" to include seniority, the conference committee's insistence on repetitious references to seniority rights, which was carried over into the bills as enacted, and the explicit prohibition against discharge "within one year after such restoration," provide significant instances of this uniform attitude. Senate and House debates furnish additional instances of the same intention. Senator Sheppard, Chairman of the Senate Military Affairs Committee, described Section 8 as an attempt "to prevent loss of seniority, accrued employment benefits * * * and other beneficial programs," (86 Cong. Rec. 10095) and the identical provision in the National Guard Act as an effort to insure that returning veterans be restored "to their former employment at the end of their training or to employment of similar pay and status." He further explained that "Persons restored to * * * positions in private employment shall be so restored without loss of seniority, insurance participation, or other benefits, and such persons shall not be discharged from such positions without cause within 1 year after such restoration." (86 Cong. Rec. 9836). Senator Thomas, another member of the Senate Military Affairs Committee, referred

to Section 8 as an attempt "* * * to make secure [the veterans'] seniority, and to make secure all of the relations they had gained as a result of working." (86 Cong. Rec. 10572). Representative Celler considered Section 8 as a direction to private employers to restore the returning veteran "to [his original] position or to a position of like seniority, status, and pay * * *," and that under these provisions, "All those who serve shall have the right to claim return to their jobs." 86 Cong. Rec. 11435. Representative Healey stated that "You have held out to these men you are going to induct into service that you will restore them insofar as you have the power to restore them to their status quo before they were inducted into the service" (86 Cong. Rec. 11703). Congressional contemplation of a "status quo" restoration is still further expressed in a colloquy on the Senate floor: "Mr. Danaher: * * * is it meant * * * that if a man goes out to serve his country under this conscription plan and comes back he assumes his prior status * * * ? * * * Mr. Sheppard: "That is what this bill intends, as I understand. That is what the members of the committee thought should be and could be done." (86 Cong. Rec. 10107.)[3]

Also significant in connection with this absolute guarantee of pre-service seniority is the 1946 amendment of the Act continuing Section 8

[3] See also statement of William L. Green, President, AFL, at 86 Cong. Rec. 10091-2.

indefinitely. (60 Stat. 341, 342). The amendment was intended to make the section "permanent law" (Statement of Managers on the part of the House of Representatives, 92 Cong. Rec. 7472) and "perpetual" (Statement of the Chairman of the House Military Affairs Committee, 92 Cong. Rec. 3588). The Chairman stated: "Section 8 of the act is the one that guarantees a man priority or seniority rights to a job, or to his old job when he returns from the service and we have maintained that provision and made it perpetual so long as the act is in effect."[19]

B. *The Terms of the Act*

Section 8 employs precise language to achieve the legislative purpose of a full year's reemployment whenever recognition of the veteran's pre-service seniority entitles him to such steady work.

The Act is unambiguous: Section 8(b) requires that the veteran be "restore[d]" to his pre-serv-

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[19] Further congressional concern for full protection of veterans' reemployment rights under Section 8 of the 1940 Act is apparent from Report No. 1268 of the Senate Committee on Armed Services, stating, with respect to the comparable reemployment section of the "Selective Service Act of 1948" (Public Law 759, 80th Cong., 2d sess.):

> "* * * as a matter of policy, no reemployment rights should be granted to personnel serving under this legislation [*i.e.*, the 1948 Act] which would contravene, or take precedence over reemployment rights now enjoyed by men who already have been in the services, and who are receiving benefits under the 1940 Act."

ice position "or to a position of like seniority, status, and pay." Use of the terms "restore" and "like seniority" clearly envisages a return to at least the seniority he had when entering the service. This directive to give the returning veteran his "status quo" seniority is repeated in Section 8(*c*). That section, specifically reiterates the congressional mandate[11] that the veteran "shall be so restored without loss of seniority * * * and shall not be discharged from such position without cause within one year after such restoration." By so defining the incidents of restoration, that section shows again how intent Congress was upon preserving the serviceman's seniority rights. Congress unquestionably was aware that a large percentage of inductees were employees of industries whose labor relations were controlled by collective bargaining agreements, that these agreements were changed from time to time including the seniority provisions thereof, and that veterans' seniority rights under the Act might well be affected by changes in the seniority provisions of such collective bargaining agreements. Certainly, in setting forth the incidents of restoration, Congress, if it had intended the result here

[11] In *Hilton* v. *Sullivan*, 334 U. S. 323, 329, which involved the job retention rights of a veteran in his federal civil service position, this Court said: "We have examined the legislative history of the Selective Training and Service Act of 1940 and find nothing whatever which faintly suggests that Congress intended its language to be less mandatory than implied by the words it used."

urged by petitioner, would not have required restoration "without loss of seniority" but would have required restoration to such seniority as would be available to the returning veteran under the collective bargaining agreement in effect at the time of his reemployment.[12]

C. The Rulings of this Court in the Veterans Reemployment cases

Petitioner, in arguing for super-seniority for union chairmen over veterans with longer service in the plant, relies primarily on language in *Fishgold* v. *Sullivan Corp.*, 328 U. S. 275, and *Trailmobile Co.* v. *Whirls*, 331 U. S. 40. But analysis of those two cases demonstrates rather that they stand for the proposition that Section 8 fully protects a returning serviceman's pre-induction seniority during the first year of his reemployment.

1. *The Fishgold and Trailmobile cases hold that Section 8 guarantees to a veteran his full pre-service seniority rank during, but not after, his first reemployment year.* In the *Fishgold* case, unlike here, the veteran was restored to his pre-service position with his full pre-service seniority. And,

[12] Other language in Section 8(c) supports the conclusion that the Act was intended to preserve to the veteran, at the least, all rights which he had at the time of his induction. Section 8(c) provides that the rules and practice "in effect with the employer at the time such person was inducted into such forces" shall determine the extent of the "insurance or other benefits" to which a returning veteran is entitled.

unlike here, no contention was there made that a collective bargaining agreement, entered into while he was in service, had attempted to reduce his pre-service seniority rank. At all times, in the *Fishgold* case, it was clear that the seniority rank to which the veteran had been actually restored upon reemployment was at least equal to the rank he held at the time of his induction. The record in the *Fishgold* case shows that the seniority provisions in the 1944 collective bargaining agreement, which required layoffs to be based on length of service, and pursuant to which Fishgold was laid off, were substantially identical to the seniority provisions embodied in the collective bargaining agreement which was in effect at the time of Fishgold's induction into the armed forces in 1943 (see Brief for Petitioner, p. 4, note 1, in the *Fishgold* case, No. 970, October Term, 1945). In fact, this Court, in the *Fishgold* case, invoked the Selective Training and Service Act of 1940, not only to secure to the veteran his full pre-service seniority, but to guarantee that his "service in the armed services is counted as service in the plant" so that he is not deprived of the benefits of the seniority he would have accumulated during the war. Since the normal operation of the seniority system in effect in Fishgold's plant prior to his induction authorized layoff on a length of plant service basis, this Court refused to sanction a departure from that system on behalf of a veteran. It accordingly re-

jected Fishgold's contention that in addition to his right to restoration "without loss of seniority," he was entitled to a full year's employment *despite* his relative seniority standing. The Court ruled that where a veteran's pre-service (plus wartime accumulated) seniority does not entitle him to steady work during his first year of reemployment, the Act does not compel the employer to furnish him with such steady work. As a necessary corollary to this ruling, it is obvious that where, as here, the veteran's pre-service seniority does entitle him to such work, the Act requires that his pre-service seniority be fully recognized, and that he be given such work for at least the statutorily-prescribed one year period.

The *Trailmobile* case similarly compels the rejection of petitioner's claim that Section 8 furnishes no protection to pre-service seniority standing even during the veteran's first year of reemployment. The veteran, in that case, returned to his former position. Like Fishgold, but unlike the veterans in the instant case, he was restored "without loss of seniority." More than a year after his reemployment a new collective bargaining agreement cut down the pre-service seniority rank to which he had been restored at the time of his return. In holding that the Selective Training and Service Act of 1940 does not protect a veteran's pre-service seniority from being impaired by a collective bargaining agreement after the expiration of his first year of reemployment,

this Court stated that the veteran is entitled to such protection during that first year (331 U. S. 40, 58-59):

> For the statutory year indeed this meant that the restored rights could not be altered adversely by the usual processes of collective bargaining or of the employer's administration of general business policy.

And, in referring to the "other rights" conferred by Section 8(b) and (c), which were specifically defined as "including restored statutory seniority," [13] this Court stated (331 U. S. 40, 55-56):

> There can be no doubt whatever that Congress intended by Section 8(c) to secure the "other rights" guaranteed by it for at least the minimum term of the prescribed one-year period. This indeed was a specific ruling of the *Fishgold* case.

2. *The Fishgold and Trailmobile cases also hold that reduction of a veteran's pre-service seniority rank, during his first reemployment year, violates Section 8 (c)'s prohibition against discharge.* The guarantee against discharge, contained in the last clause of Section 8 (c) of the Act, was held, in the *Fishgold* case, to be "broad enough to cover demotions. * * * If within the statutory period [the veteran] is demoted * * * [he] would within the meaning of Section 8 (c) be discharged" (328 U. S. 275, 286).

[13] See 331 U. S. 40, 53.

It is clear from the *Trailmobile* case that the failure, during the reemployment year, to restore a veteran to at least the same seniority status that he had when he left for the service constitutes such a "demotion" and therefore a "discharge" prohibited by Section 8 (c). In the *Trailmobile* case, this Court, analyzing the *Fishgold* holding, restated the proposition (331 U. S. 40, 56-57):

> [The *Fishgold* case] squarely held that [the veteran] was given security not only against complete discharge, but also against demotion, for the statutory year. And demotion was held to mean impairment of "other rights," including his restored statutory seniority for that year. "If within the statutory period he is demoted, his status, which the Act was designed to protect, has been affected and the old employment relationship has been changed. He would then lose his old position and acquire an inferior one. He would, within the meaning of Section 8 (c) be discharged from such position." 328 U. S. at 286.
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> That Section 8 (c) applies to secure the protection of "other rights" for at least the statutory year was therefore inherent in the rationalization of the *Fishgold* decision. * * * While the reemployed veteran did not acquire superseniority, Section 8 (c) gave him the restored standing for the minimum duration of the prescribed year.

The language quoted and the actual decision in

the *Fishgold* case makes two things clear: (1) Fishgold's layoff did not constitute a "discharge" prohibited by Section 8 (c) because even though it occurred within the statutory year, it was "temporary" [14] and not in any way the result of any demotion or reduction in seniority rank held by the veteran prior to his induction; and (2) where a veteran's pre-service seniority has been reduced during his first year of reemployment, the "demotion" to the "inferior position" resulting from such reduction, constitutes a "discharge" in violation of Section 8 (c). The precise language of this Court on this second point is made even stronger by a footnote explanation in the *Trailmobile* case (331 U. S. 40, 53, fn. 23):

> The position to which an employee must be restored is either the position previously held or "a position of like seniority, status, and pay." See note 18. It is thus recognized that *part of the restored "position" is the seniority accrued prior to service in the armed forces* and, under the *Fishgold* case, during service. "Seniority" is part of "position," and therefore when the Act states in subsection (c) that the veteran may not be discharged "from such position" it means both from the job itself and from the seniority which is part of the job. [Emphasis supplied.]

These statements leave no room for doubt that a reduction in pre-service seniority, effected during

[14] See *Hilton v. Sullivan*, 334 U. S. 323, 332.

the veteran's first year of reemployment, violates the "discharge" prohibition of Section 8 (c). And, at the same time, they shed light on other language of the *Fishgold* opinion on which petitioner relies, in which this Court stated that the Act undertook "to give the veteran protection within the framework of the seniority system plus a guarantee against demotion or termination of the employment relationship without cause for a year." (328 U. S. 275, 288). For, while *Fishgold* held that veterans had to suffer the consequences of the normal operation of the seniority system in effect at the time of their induction, that case, as was said in the *Trailmobile* case, also held that the Act assured the veterans that, at least for the statutory reemployment year, their pre-service seniority rank would not be impaired. Such impairment was condemned by this Court as a "demotion" or "discharge" in violation of the Act, even though no termination of the employment relationship or actual loss of work resulted (331 U. S. at 57). Certainly, where, as here, the 1945 agreement not only caused a "demotion" in the veteran's pre-service seniority status, in the sense of placing their names in a lower position on the seniority roster, but also denied them the pay they would otherwise have earned during the period of the lay-off, there is even greater reason for invoking the protection of the Act.

II

The Veteran's Pre-service Seniority May Not Be Impaired by Later Collective Bargaining Agreement Until He Has Had One Year of Reemployment

A. Although a Veteran's Pre-service Seniority Is Derived from Contract, It is Protected by Section 8 During the First Year of Reemployment, and Thus May Not Be Impaired by a Later Collective Bargaining Agreement.

Petitioner contends that employment does not carry with it any inherent right to seniority, but that the seniority rights of the veterans here involved exist only by virtue of the collective bargaining agreements between it and respondent Lockheed. Apart from this agreement, it is argued, there would be no right of seniority in respondent veterans. Based on that premise, the argument evidently is that since the present collective bargaining contract confers super-seniority on union chairmen, the seniority rights derived from that contract by all other employees, including veterans during their first year of reemployment, are subject to the absolute priority it confers on union chairmen. While conceding that seniority rights in this as in most other situations result from collective bargaining agreements, the short answer to this argument is that absent any contractual seniority system, the veteran's right to a full year's reemployment is absolute. Moreover, there can be no doubt that the Act clearly requires that the

veteran be restored to "the seniority accrued prior to his service in the armed forces," *Trailmobile Co.* v. *Whirls*, 331 U. S. 40, 53, fn. 23. And this restoration to pre-service seniority is required by the Act regardless of any unfavorable change in seniority rules during the employees' military service, since a failure to restore a veteran to his preservice seniority constitutes a discharge "within one year" in violation of Section 8 (c). *Id.*, p. 57. Any other conclusion would make Section 8's guarantee of restoration to reemployment with pre-service seniority dependent upon the acquiescence of the employer and the union.

Thus, while the Act does not create its own seniority system, it does give statutory protection to contract-derived seniority existing at the time the veteran joined the armed forces. So direct and complete is the statutory protection extended to veterans' seniority rights initially derived from contract that this Court, in the *Trailmobile* case, regularly referred to such seniority as being "statutory" in nature.[15] Since the seniority rights are "statutory," even though derived from a collective bargaining contract,[16] they are not, so far as

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[15] The sole question on the merits in the *Trailmobile* case was stated by this Court to be "whether under Section 8 the veteran's right to *statutory seniority* extends * * * beyond * * * the first year * * *": (331 U. S. 40, 51) (Emphasis supplied). For additional references by this Court to "statutory seniority" under the Act see, *id.* at 53 and 56.

[16] See *Trailmobile Co.* v. *Whirls*, 331 U. S. 40, 53, fn. 21; *Polanskey* v. *Monongahela R. Co.*, 342 Pa. 188; *Ryan* v. *New York Central R. R.*, 267 Mich. 202, 208; *Casey* v. *Brotherhood*, 197 Minn. 189, 191-2.

the returning veteran's status for his first reemployment year is concerned, subject to impairment by a superseding bargaining agreement. "No practice of employers or agreements between employers and unions can cut down the service adjustment benefits which Congress has secured the veteran under the Act." *Fishgold* v. *Sullivan Corp.*, 328 U. S. 275, 285. Contractual provisions in effect even prior to the veteran's induction into the service which, if literally construed, would deprive the returning veteran of this seniority conferred by the Act will not be recognized.[17] *Spearmon* v. *Thompson*, 167 F. 2d 626, 630 (C. A. 8), certiorari denied, 335 U. S. 822; *Rudisill* v. *Chesapeake & O. Ry. Co.*, 167 F. 2d 175, 179 (C. A. 4); *Anglin* v. *Chesapeake & O. Ry. Co.*, 77 F. Supp. 359 (S. D. W. Va.). Where as here, the later bargaining agreement is in conflict with the protective provisions of the statute, the agreement obviously must yield. *Fishgold* v. *Sullivan Corp.*, 328 U. S. 275, 285; *Waskey* v. *Hammer*, 223 U. S. 85, 94; *Ewert* v.

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[17] Section 8 "is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need. See *Boone* v. *Lightner*, 319 U. S. 561, 575." *Fishgold* v. *Sullivan Corp.*, 328 U. S. 275, 285. Accord: *Houghton* v. *Texas State Life Ins. Co.*, 166 F. 2d 848, 849 (C. A. 5), certiorari denied, 335 U. S. 822; *Levine* v. *Berman*, 161 F. 2d 386, 388 (C. A. 7), certiorari denied, 332 U. S. 792; *Grasso* v. *Crowhurst*, 154 F. 2d 208, 210-211 (C. A. 3), certiorari denied, 329 U. S. 714; *Bryan* v. *Griffin*, 166 F. 2d 748, 750 (C. A. 6); *Kay* v. *General Cable Corp.*, 144 F. 2d 653, 654 (C. A. 3); *Flynn* v. *Bendix Aviation Corp.*, 77 F. Supp. 452 (D. Mass.); *Noble* v. *International Nickel Co.*, 77 F. Supp. 352, 354 (S. D. W. Va.); *Morris* v. *Chesapeake & O. Ry. Co.*, 75 F. Supp. 429, 431 (N. D. Ind.).

Bluejacket, 259 U. S. 129, 138; *Miller* v. *Ammon*, 145 U. S. 421; *Harris* v. *Runnels*, 12 How. 79, 84; cf. *Brooklyn Savings Bank* v. *O'Neil*, 324 U. S. 697.

B. *Section 8 Demands More Than Protection of the Veteran from Discrimination.*

1. *The purpose of Section 8 may not be narrowed merely to prohibit collective bargaining agreements which discriminate against the returning veteran because of his military service; even as against non-discriminatory agreements, the Act affirmatively protects the veteran's right to his pre-service seniority status during the first year of his reemployment.* Petitioner urges that the purpose of Section 8 is fulfilled whenever the returning veteran is not discriminated against by reason of his absence in military service. Therefore, it is argued, that since the impairment of seniority rights here involved was directed not against veterans alone but against all employees in the same plant (excluding union chairmen), there was absent the discrimination banned by the Act. In support of this argument, petitioner properly invokes the Third Circuit cases which are in conflict with the decision below: *Gauweiler* v. *Elastic Stop Nut Corp.*, 162 F. 2d 448; *Koury* v. *Elastic Stop Nut Corp.*, 162 F. 2d 544; *DiMaggio* v. *Elastic Stop Nut Corp.*, 162 F. 2d 546, and *Payne* v. *Wright Aeronautical Corp.*, 162 F. 2d 549. The latter four cases, all decided by the Court of Appeals for the Third Circuit on the same day, pro-

ceed on the assumption that a veteran's pre-service seniority rights may be impaired by a later collective bargaining agreement entered into while the veteran was on military furlough simply because such impairment was not limited to veterans but adversely affected non-veterans' seniority rights as well.[18]

The purpose of the Act extends beyond protection of veterans against discrimination. The lack of merit in the suggestion that the Act's reemployment provisions merely prohibit discriminatory practices against the veteran is evident from the text of the statute itself. In fact, in the *DiMaggio* case, the Court of Appeals for the Third Circuit recognizes that its conclusion, as well as that arrived at in the related *Gauweiler* case, conflicts with the "exact letter" of Section 8 (b) (*DiMaggio* v. *Elastic Stop Nut Corp.*, 162 F. 2d 546, 548, concurring opinions).

In many of its clauses the Act clearly extends to a reemployed veteran protection which would not have been his if he had always remained at work. (1) He is protected against discharge without cause

[18] Until the *Fishgold* case settled the question, there was some disagreement as to whether seniority rights continued to accumulate during the employee's military service or were frozen as of the time of induction. See Military-Service and War-Job Clauses in Union Agreements, 55 Monthly Labor Review 1147, 1150; Brecht, Collective Bargaining and Re-employment of Veterans, 227 Annals of the American Academy of Political and Social Science 94, 95. However, prior to the *Gauweiler* and related decisions there apparently existed no doubt that the veteran was entitled to return to the seniority which he enjoyed at the time of his induction.

for the statutory year after his reinstatement. No such guarantee is normally available to other employees, except, of course, where a contract has fixed the term of employment. (2) He is guaranteed against receiving a job inferior to his pre-service job, even though had he stayed at the plant, he could have been assigned to a job drawing less pay. (3) He participates in insurance and other benefits (*e.g.*, health, welfare, and retirement plans) pursuant to rules "in effect with the employer at the time such person was inducted into such forces" (Section 8 (c)), although the rules may have been revised during his military service so as to withdraw some or all of these benefits from employees then at work. (4) He is, as we have shown above, entitled to his full pre-service seniority standing, despite the fact that collective bargaining agreements entered into while he was in service cut down seniority rights of employees who never left the plant for war service. (5) And, if he is returning to the federal civil service he is entitled to remain on the job for a full year even though a reduction in force causes the furloughing of non-veterans having greater seniority. *Hilton* v. *Sullivan*, 334 U. S. 323; see, 5 Code Fed. Reg. (Supp. 1947), sec. 20.3(a).

There is no doubt that each of the enumerated protections operates to bar discrimination against the veteran as such; but it is equally clear that the Act chiefly concerns itself with the more affirma-

tive goal of enabling the discharged soldier to renew his commercial or industrial career in at least as good a position as he had when he left to enter the armed forces. *John S. Doane Co.* v. *Martin*, 164 F. 2d 537, 540 (C. A. 1): Protection against discrimination, while important, is not enough. The returning veteran is to have the fixed and accustomed starting point of his old job from which to begin his economic readjustment in civilian life.[19] Part of that old job, this Court has pointed out, "is the seniority accrued prior to service in the armed forces" (*Trailmobile Co.* v. *Whirls*, 331 U. S. 40, 53, fn. 23).

If the legislative intention had been merely to safeguard the veteran from being penalized because of his military service, Section 8 would not have been drafted along the lines of an affirmative specification of the rights secured by it. It would and could have been cast, as is the National Labor Relations Act, in the familiar terms of a general prohibition against such discrimination. In fact, early in the legislative history of the reemployment provisions here involved, it was proposed to make the failure of the employer to reemploy the veteran "an unfair labor practice, within the meaning of and for all the purposes of the National Labor Relations Act"; S. Rep. No. 2002, 76th Cong., 3d sess., p. 4; 86 Cong. Rec. 10107; S. Rep. No. 1987, 76th Cong., 3d sess., p. 2; 86 Cong. Rec. 10068. The

[19] See *supra*, p. 13.

House of Representatives, however, struck out the reference to the unfair labor practice, and its amendment was accepted in conference and embodied in the final legislation. Consequently, reading the statute, as do petitioners and as did the court in the *Gauweiler* and related cases, to embody only a rule against discrimination, not only ignores the statute's essential purpose and its express terms, but writes into it provisions which Congress deliberately rejected.

The *Fishgold* and *Trailmobile* cases support no other conclusion. In the *Fishgold* case, this Court prefaced its enumeration of the specific statutory guarantees contained in Section 8 with the statement that: "The Act was designed to protect the veteran in several ways. He who was called to the colors was not to be penalized on his return by reason of his absence from his civilian job. *He was, moreover, to gain by his service for his country an advantage which the law withheld from those who stayed behind.*" (Italics supplied) 328 U. S. 275, 284. Again in the *Trailmobile* case, these additional advantages available under the Act only to the returning veteran were described as giving him "extraordinary statutory security" (331 U. S. 40, 59). Thus the Court has fully recognized the Act's intent to serve a dual purpose—to bar discrimination against the veteran, and to give him a definite measure of economic security not available to non-veterans. At the same time, these

statements emphasize the basic fallacy in the limited-to-discrimination-purpose approach urged by petitioner here and espoused by the Court of Appeals for the Third Circuit in the *Gauweiler* and related cases.

It is no answer, therefore, to urge that the veteran respondents are in no worse a position than they would have been if they had never gone to war. Since they did go, they are in a different position, and entitled to the protection not accorded by the Act to those who not only did not assume the burden of their country's defense but received high wartime pay as well.[20]

2. *The decision below does not impair effective labor relations.* Throughout the *Gauweiler* and related opinions there seems to be expressed the fear that failure to enforce the union chairmen super-seniority provision against veterans with greater seniority, may somehow disrupt harmonious labor-management relations. In view of the direct conflict between those cases and the decision of the court below, a short discussion of the fears raised by the Third Circuit is in order.

The initial difficulty envisaged by the Third Circuit is a "merry-go-round" infinitely destructive to industrial peace (*DiMaggio* v. *Elastic Stop Nut Corp.*, 162 F. 2d 546, 548, concurring opinion).

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[20] *Grubbs* v. *Ingalls Iron Works Co.*, 66 F. Supp. 550, 553-554 (N. D. Ala.); see Seniority and Reemployment of War Veterans (National Industrial Conference Board Studies in Personnel Policy, No. 65 (1944), pp. 2-3, 7.).

For, that court states, a senior veteran displacing a junior union chairman will in turn be displaced, under the *Fishgold* case, by a non-veteran having greater seniority than the veteran. The non-veteran in turn will then be displaced by the union chairman, who, although having less seniority, is entitled to absolute seniority under the union agreement. Then, the court points out, "this process must be repeated *ad infinitum*." (162 F. 2d 546, 548.) The court there terminated the cycle by giving controlling effect to the collective bargaining agreement rather than to the federal statute, a solution which, we submit, the court below properly rejected. Examination of the *Fishgold* case, moreover, makes it apparent that the "merry-go-round" suggested by the Third Circuit will not result. In the *Fishgold* case there was no doubt that the veteran had been restored to his full pre-service seniority as required by Section 8. (See *supra*, p. 27). This Court there held that after such restoration had been effected, Section 8 of the 1940 Act did not compel the employer to give the veteran super-seniority over a non-veteran, who had more years of plant service. However, Section 8, which protects only the rights of a veteran, cannot be invoked to compel an employer to discharge a veteran in favor of a non-veteran employee with greater seniority. See *Lindsey* v. *Leewright*, 17 U. S. Law Week 2311 (C. A. 5). Accordingly, if the non-veteran employees choose to make a collective

bargaining agreement giving super-seniority to union officers, they have no complaint if Section 8 limits the application of such super-seniority to the non-veteran employees. Specifically, the seniority rights of a non-veteran may be modified by the subsequent agreement while those of the veteran may not, at least during his first year of reemployment. Thus, if there are only two jobs and three employees —a non-veteran, a veteran and a non-veteran union chairman with normal seniority in that order, the jobs must go to the veteran and the union chairman. Accordingly, since the *Fishgold* case does not require displacement of the veteran by the senior non-veteran, the second phase of the "merry-go-round" is not even reached.

The need for continuation in the office of union chairmen in order to avoid interference with collective bargaining and to enable union members "to have their own representatives on the job to look after their interests," [21] is also advanced as justification for the Third Circuit Court's conclusions (*Gauweiler* v. *Elastic Stop Nut Corp.*, 162 F. 2d 444, 451; *DiMaggio* v. *Elastic Stop Nut Corp.*, 162 F. 2d 546, 547). The theory is that effective collective bargaining is facilitated by continuation in employment of union chairmen who have acquired skills in resolving the day-to-day disputes between an employee and the manage-

[21] Cf. Harbison, *Seniority Policies and Procedures as Developed through Collective Bargaining* (Princeton University, Industrial Relations Section, Research Report No. 63, 1941), p. 11.

ment. However, accepting this theory as valid,[22] it would seem that the unions, by specific provision to that effect in their contracts, could provide that whereas a union chairman does not have absolute seniority over a senior veteran during the latter's first year of reemployment, he does have absolute seniority at all times over all non-veterans regardless of their length of service.[23] Under such a provision, in the event of a reduction in force, both the veteran and the union chairman would remain at work while the other non-veteran would be furloughed. The suggested provision would thus allow the union chairman to continue in office without impairing the rights of the veteran under Section 8, and would have the further virtue of not seeking to overrule the mandate of Section 8 of the Act by a collective bargaining agreement.

The virtues or vices of the "top seniority" system for union officials, then, are not here in

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[22] It should be noted that the 1945 agreement itself allows a union chairman to hold office for only one year, after which time new elections for the chairmanship must be held (Art. II, Sec. 2, R. 49).

[23] Some unions already use provisions which avoid deprivation of a veteran's pre-service seniority and thereby assure him of steady work during the first reemployment year. See, *e.g.*, the clauses giving shop stewards "top priority provided there is no conflict with the Selective Service Law." Collective Bargaining Contracts and Negotiations, (Bureau of National Affairs, p. 51:205). See also reference to Seniority and Reemployment of War Veterans (National Industrial Conference Board Studies in Personnel Policy, No. 65 (1944), p. 9.).

issue. As the suggested solution indicates, management and labor can make such a system fully operative except where it would whittle away the guarantees of Section 8 to the returning veteran during his first reemployment year. And such a "top seniority" clause may be made effective even as against the veteran during that first year wherever the clause existed as a condition of the veteran's employment at the time of his induction. In the latter situation, the veteran would have no just cause for complaint since the condition insisted upon by the employer and the union at the time of his return would be the same as that to which he was subject when he left for military duty. *Kemp* v. *John Chatillon & Sons,* 169 F. 2d 203, 205, 206 (C.A. 3); *Boston & Maine R. R.* v. *David,* 167 F. 2d 722, 725 (C. A. 1); *Lesher* v. *P. R. Mallory & Co.,* 166 F. 2d 983, 985 (C. A. 7); *Harvey* v. *Braniff International Airways,* 164 F. 2d 521, 522 (C. A. 5); *Feore* v. *North Shore Bus Co.,* 161 F. 2d 552, 554 (C. A. 2); *Harrison* v. *Seaboard Air Line R. Co.,* 77 F. Supp. 511 (E. D. S. Car.). Where, however, the condition was not present at the time of his induction, but was imposed during military furlough, it may not, we submit, be invoked against the returning veteran during his first reemployment year.

CONCLUSION

For the reasons stated, it is respectfully submitted that the decision below should be affirmed.

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JANUARY 1949.

APPENDIX

The Selective Training and Service Act of 1940 as amended, 54 Stat. 885, 58 Stat. 798, 50 U. S. C. App. 308, provides in pertinent part:

Sec. 8. (a) Any person inducted into the land or naval forces under this Act for training and service, who, in the judgment of those in authority over him, satisfactorily completes his period of training and service under section 3(b) shall be entitled to a certificate to that effect upon the completion of such period of training and service, which shall include a record of any special proficiency or merit attained. * * *

(b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within ninety days after he is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—

(A) if such position was in the employ of the United States Government, its Territories or possessions, or the District of Columbia, such person shall be restored to such position or to a position of like seniority, status, and pay;

(B) if such position was in the employ of a private employer, such employer shall restore

such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so;

* * * * * *

(c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration.

* * * * *

(e) In case any private employer fails or refuses to comply with the provisions of subsection (b) or subsection (c), the district court of the United States for the district in which such private employer maintains a place of business shall have power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such provisions, to specifically require such employer to comply with such provisions, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered

by reason of such employer's unlawful action. The court shall order a speedy hearing in any such case and shall advance it on the calendar. Upon application to the United States district attorney or comparable official for the district in which such private employer maintains a place of business, by any person claiming to be entitled to the benefits of such provisions, such United States district attorney or official, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require such employer to comply with such provisions: *Provided*, That no fees or court costs shall be taxed against the person so applying for such benefits.

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SUPREME COURT U S

IN THE

Supreme Court of the United States

October Term, 1948

No. 333

AERONAUTICAL INDUSTRIAL DISTRICT LODGE 727, an unincorporated association,

Petitioner,

vs.

JAMES L. CAMPBELL, MITCHELL B. JOPLIN, MALCOLM E. KIRK and LOCKHEED AIRCRAFT CORPORATION, a corporation,

Respondents.

BRIEF OF RESPONDENT LOCKHEED AIRCRAFT CORPORATION, A CORPORATION

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Statutes Involved

The pertinent provisions of the Selective Training and Service Act of 1940, 54 Stat. 890 (1940) as amended, 58 Stat. 799 (1940) (50 U. S. C. A. App. Sec. 301, *et seq*), provide as follows:

Sec. 8(b)—"In the case of any such person, who, in order to perform such training and service (in the armed forces), has left or leaves a position other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within ninety days after he is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—

. . . "

"(B) If such position was in the employ of a private employer, such employer shall restore such person to such position, or to a position of like seniority, status and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so; . . ."

Sec. 8(c)—"Any person who is restored to a position in accordance with the provisions of paragraph (A) and (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of senority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees

on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration."

The Service Extension Act of 1941, as amended (50 U. S. C. A. App. Sec. 357), as relevant hereto provides as follows:

> Sec. 7.—"Any person who, subsequent to May 1, 1940, and prior to the termination of the authority conferred by section 2 of this joint resolution, shall have entered upon active military or naval service in the land or naval forces of the United States shall be entitled to all the reemployment benefits of section 8 of the Selective Training and Service Act of 1940, as amended."

Statement of the Case.[1]

Respondents James L. Campbell, Mitchell B. Joplin and Malcolm E. Kirk, prior to their respective entrances into the armed forces in 1944 and 1945, were employed by respondent Lockheed Aircraft Corporation as Field and Service Mechanics. Although membership in the Union[2] was not a condition of such employment, veterans Joplin and Kirk have been members of the Union since 1943, and veteran Campbell was a member from November 2, 1942, until March 1, 1946 [R. 97-98]. At the time the

[1] The facts appear in two stipulations, one written [R. 97-107] and one oral [R. 125-126].

[2] In the interest of brevity, intervenor and petitioner Aeronautical Industrial District Lodge 727 is hereinafter referred to as "the Union."

Veterans[3] terminated their employment to enter the armed forces, there was in effect between Lockheed and the Union a collective bargaining agreement dated September 15, 1941 (hereinafter called the "1941 Agreement"), which agreement remained in effect until June 4, 1945. So far as is here pertinent the 1941 Agreement provided that each employee's seniority accumulated from the date of his original hire [R. 22], and further provided in Section 5 of Article III thereof as follows:

> "In case of a slack in production, layoffs are to be made primarily on the basis of the principle of seniority. Due consideration will be given, however, to (a) knowledge, ability, skill and efficiency, and (b) department record and other factors. . . ." [R. 23-24.]

On receiving an honorable discharge from the armed services, each of the Veterans applied for reemployment with, and was reemployed by, Lockheed as a Field and Service Mechanic.

Within a year after their being so reemployed, Lockheed found it necessary to conduct a general layoff in the Field and Service Mechanic occupation, and in the course thereof each of the Veterans was laid off, although Lockheed continued to retain in active employment in said occupation a nonveteran Union Chairman with less seniority than any of the Veterans.

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[3]For purposes of convenience and in order to avoid any confusion in designating the various parties herein, the respondents James L. Campbell, Mitchell B. Joplin and Malcolm E. Kirk will hereinafter be referred to as "the Veterans"; respondent Lockheed Aircraft Corporation will be referred to as "Lockheed."

The retention of a Union Chairman junior in seniority to each of the Veterans resulted from Lockheed's adherence to Sections 3(A) and 3(D), Article IV of the collective bargaining agreement dated June 4, 1945 (hereinafter called the "1945 Agreement") [R. 60-61]. The 1945 Agreement which was executed while each of the Veterans was on active duty with the armed forces was similar to the 1941 Agreement in its definition of seniority, but with respect to layoff provisions the 1945 Agreemen radically altered the procedures under the 1941 Agreement inasmuch as the 1945 Agreement granted top "seniority" or "super-seniority" to Union Chairmen in their respective occupations. In this respect the 1945 Agreement provided as follows:

> Section 3(A) of Article IV—"General Layoff Procedure. Layoffs shall be made in order of Company-wide senority applied by occupation where ability, skill and efficiency[4] are substantially equal. However, in the case of employees with four years' or more seniority, the Company may, in its discretion, retain them in order of their Company-wide seniority, regardless of occupation, where ability, skill and efficiency are substantially equal. Any claim of unjust discrimination in the exercise of such discretion may be taken up as a grievance. Employees who have not acquired seniority rights may be laid off without regard to relative length of service.
>
> "The word 'occupation' as used herein, includes all grades and leadmen within an occupation."

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[4]It is agreed by all parties to the within action that the knowledge, training, ability, skill and efficiency of each of the Veterans was substantially equal to that of the non-veteran Union Chairman retained and that each of the Veterans was capable of performing the work of said non-veteran Union Chairman. [R. 106.]

Section 3(D)—"Top Seniority for Union Chairmen for Purpose of Layoffs. For the purpose of applying the Temporary and General Layoff procedure, Union Chairmen who have acquired seniority shall be deemed to have top seniority so long as they remain Chairmen. If the application of the General Layoff Procedure will result in the retention of more of such Chairmen in a group or department than are provided for in Article II, Section 2 of this Agreement, the Company shall prepare and furnish to the Union a list of all Chairmen in the locations where the surplus exists. The Union shall upon request of the Company promptly designate the Chairmen who are to remain in that capacity, and the Chairmen not to be retained as Chairmen shall be governed by the seniority rules applicable to the layoff of other employees. During a Temporary Layoff and during the period between the first and second steps in an Emergency Reduction of the Working Force, the terms of office of laid-off Union Chairmen shall be deemed to continue.", [R. 60-62.]

Both the 1941 and 1945 Agreements contained provisions wherein the Union and Lockheed mutually acknowledged the obligations of Lockheed to reemploy its returning veterans. Section 5, Article IV of the 1941 Agreement provided that an employee entering the military service

"shall be granted leave of absence covering the period of time in which he may be thus engaged in Government service without loss of seniority rights. Upon the termination of such Government service, if within

forty-five (45) days[*] such employees shall request re-employment and if the employees are physically and mentally able to do the work available, the Company agrees to re-employ such persons in preference to all other persons in their occupations with less seniority." [R. 27-28.]

Section 6 of Article IV of the 1945 Agreement states:

"Employees (other than temporary employees) who shall have left the employment of the Company for the purpose of entering the armed forces of the United States, shall be re-employed by the Company in accordance with the provisions of the Selective Training and Service Act of 1940, as such Act may be amended." [R. 63.]

The Veterans protested their layoff claiming they had not been restored to their former positions without loss of seniority and that they had been improperly laid off [R. 9, 88]. Within approximately three weeks after the layoff the Veterans were recalled to work as Field and Service Mechanics but were not reimbursed for the wages lost during the period of their layoff.

On November 27, 1946, the present action was instituted in the District Court to recover such wages. Lockheed answered the Veterans' complaint on December 13, 1946, denying liability [R. 89-91]. The Union petitioned for, and was given permission to, intervene as an added respondent and to file a separate answer [R. 92-96].

Judgment was entered in favor of the Veterans against Lockheed for wages lost during their layoff [R. 113-114].

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[*]The forty five (45) day period within which the Veteran must make application to be entitled to reemployment (54 Stat. 890 [1940]) was by an amendment in 1944, 58 Stat. 798, extended to ninety (90) days.

and the Union alone appealed to the Circuit Court of Appeals for the Ninth Circuit from said judgment [R. 111-115]. The Circuit Court of Appeals affirmed [R. 132-135].

Statement of the Position of Lockheed Aircraft Corporation.

Upon the intervention of the Union in this action, the Union and the Veterans became the true parties in interest, and although Lockheed is named as a respondent in this action, it deems its part herein to be in reality that of *amicus curiae* and submits this brief from that standpoint.

The position taken by the Veterans at the time of their layoff in demanding reinstatement and reimbursement of wages lost during their layoff necessitated a determination by Lockheed as to whether Section 3(D), Article IV of the 1945 Agreement, granting Union Chairmen top seniority in the event of a general layoff regardless of their actual seniority, contravened the reemployment provisions of the Selective Training and Service Act of 1940, as amended, *supra*.

The importance of this decision cannot be lightly minimized for Lockheed had reemployed in excess of 6000 veterans during the preceding two years and was at that time faced with the necessity of making major reductions in its working forces.

Furthermore, the necessity for such a decision obviously placed Lockheed in a serious dilemma for in the event it complied with the provisions of Section 3(D) of Article IV of the 1945 Agreement and granted Union Chairmen top or "super-seniority" when conducting a general lay-

off, Lockheed would be faced with an action by each and every veteran laid off in an occupation in which a veteran or non-veteran Union Chairman with less seniority was retained, if the veteran had entered the armed forces subsequent to the date of the 1941 Agreement and had been reemployed and had not completed his first year of reemployment after the execution of the 1945 Agreement. Conversely, if Lockheed concurred in the position advanced by the Veterans, it subjected itself to possible grievances and actions by the Union for failure to comply with the 1945 Agreement. The reality of this dilemma is indicated, first, by the fact that many such grievances were filed by the Union and secondly, by the intervention of the Union in this action.

Lockheed eventually concluded, after carefully reviewing all decisions and opinions then available on the question of veteran's reemployment rights, that the position taken by the Veterans was correct.

See:

Fishgold v. Sullivan Drydock & Repair Corporation, 328 U. S. 275, 66 S. Ct. 1105, 90 L. Ed. 963;

DeMaggio v. Elastic Stop Nut Corp., 11 C. C. H. Labor Cases p. 70072 (D. C., N. J., 1946);

Gauweiler v. Elastic Stop Nut Corp., 69 Fed. Supp. 294;

Koury v. Elastic Stop Nut Corp., 11 C. C. H. Labor Cases p. 70071 (D. C., N. J., 1946).

Accordingly, Lockheed recalled each of the Veterans herein and reinstated him in his respective former position—Campbell and Joplin on July 15, 1946, and Kirk on July 16, 1946 [R. 107].

Since that time Lockheed has consistently followed the policy of retaining in their respective occupations for the full period of their reemployment year all veterans who were inducted or enlisted in the military service while the 1941 Agreement was in effect when the occupational seniority rosters disclose that there is, in the veteran's occupation, a Union Chairman with less seniority than the veteran's. However, to avoid a possible double monetary liability which might result to Lockheed if it reimbursed the Veterans herein and its interpretation of the Act was determined to be incorrect, Lockheed denied the claims of the Veterans for reimbursement for loss of wages they sustained during their layoff.

This policy followed by Lockheed since the reinstatement of the Veterans here involved, is consistent with the decision of the court below and Lockheed believes such decision to be correct as a matter of law.

See:

Trailmobile Co. v. Whirls, 331 U. S. 40, 67 Sup. Ct. 982, 91 L. Ed. 939;

Spearmon v. Thompson, 8 Cir., 167 F. 2d 626;

Rudisill v. Chesapeake & Ohio Ry. Co., 4 Cir., 167 F. 2d 175;

Dwyer v. Crosby Co., 2 Cir., 167 F. 2d 567;

Foor v. Torrington Co., 7 Cir., 170 F. 2d 487.

It is respectfully submitted that the judgment below should be affirmed.

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